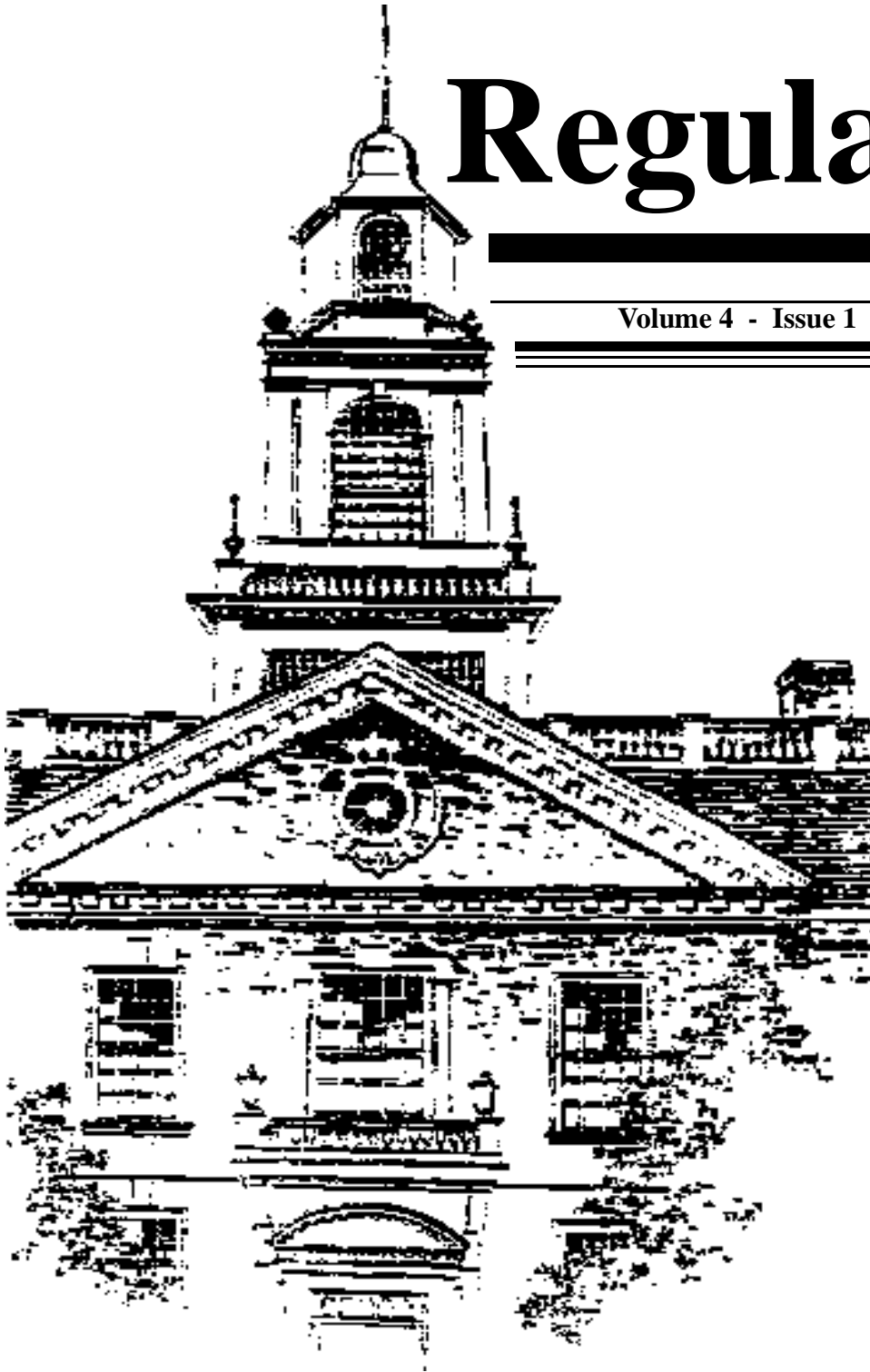


# Delaware Register of Regulations



Issue Date: July 1, 2000

Volume 4 - Issue 1

Pages 1 - 239

## IN THIS ISSUE:

### Regulations:

- Errata
- Proposed
- Final

### Governor

- Executive Orders
- Appointments
- General Notices
- Calendar of Events &  
Hearing Notices



Pursuant to 29 Del. C. Chapter 11, Subchapter III, this issue of the Register contains all documents required to be published, and received, on or before June 15, 2000.

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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## DELAWARE REGISTER OF REGULATIONS

The Delaware Register of Regulations is an official State publication established by authority of 69 Del. Laws, c. 107 and is published on the first of each month throughout the year.

The Delaware Register will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

The Register will also publish some or all of the following information:

- Governor's Executive Orders
- Governor's Appointments
- Attorney General's Opinions in full text
- Agency Hearing and Meeting Notices
- Other documents considered to be in the public interest.

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## CITATION TO THE DELAWARE REGISTER

The Delaware Register of Regulations is cited by volume, issue, page number and date. An example would be:

**3 DE Reg. 737 - 742 (12/1/99)**

Refers to Volume 3, pages 737 - 742 of the Delaware Register issued on December 1, 1999.

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## SUBSCRIPTION INFORMATION

The cost of a yearly subscription (12 issues) for the Delaware Register of Regulations is \$120.00. Single copies are available at a cost of \$12.00 per issue, including postage. For more information contact the Division of Research at 302-739-4114 or 1-800-282-8545 in Delaware.

## CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

Delaware citizens and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

Under 29 **Del.C.** §10115 whenever an agency proposes to formulate, adopt, amend or repeal a regulation, it shall file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the Register of Regulations pursuant to §1134 of this title. The notice shall describe the nature of the proceedings including a brief synopsis of the subject, substance, issues, possible terms of the agency action, a reference to the legal authority of the agency to act, and reference to any other regulations that may be impacted or affected by the proposal, and shall state the manner in which persons may present their views; if in writing, of the place to which and the final date by which such views may be submitted; or if at a public hearing, the date, time and place of the hearing. If a public hearing is to be held, such public hearing shall not be scheduled less than 20 days following publication of notice of the proposal in the Register of Regulations. If a public hearing will be held on the proposal, notice of the time, date, place and a summary of the nature of the proposal shall also be published in at least 2 Delaware newspapers of general circulation. The notice shall also be mailed to all persons who have made timely written requests of the agency for advance notice of its regulation-making proceedings.

The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the Register of Regulations. At the conclusion of all hearings and after receipt, within the time allowed, of all written materials, upon all the testimonial and written

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended; (3) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported by its findings on the evidence and information received; (4) The exact text and citation of such regulation adopted, amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The signature of at least a quorum of the agency members.

The effective date of an order which adopts, amends or repeals a regulation shall be not less than 10 days from the date the order adopting, amending or repealing a regulation has been published in its final form in the Register of Regulations, unless such adoption, amendment or repeal qualifies as an emergency under §10119.

Any person aggrieved by and claiming the unlawfulness of any regulation may bring an action in the Court for declaratory relief.

No action of an agency with respect to the making or consideration of a proposed adoption, amendment or repeal of a regulation shall be subject to review until final agency action on the proposal has been taken.

When any regulation is the subject of an enforcement action in the Court, the lawfulness of such regulation may be reviewed by the Court as a defense in the action.

Except as provided in the preceding section,

no judicial review of a regulation is available unless a complaint therefor is filed in the Court within 30 days of the day the agency order with respect to the regulation was published in the Register of Regulations.

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## CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

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ISSUE DATE	CLOSING DATE	CLOSING TIME
AUGUST 1	JULY 15	4:30 P.M.
SEPTEMBER 1	AUGUST 15	4:30 P.M.
OCTOBER 1	SEPTEMBER 15	4:30 P.M.
NOVEMBER 1	OCTOBER 15	4:30 P.M.
DECEMBER 1	NOVEMBER 15	4:30 P.M.

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## DEPARTMENT OF AGRICULTURE

## HARNESS RACING COMMISSION

Statutory Authority: 3 Delaware Code,  
Section 10027 (3 Del.C. 10027)

**PLEASE NOTE: THE FINAL REGULATION PUBLISHED IN 3 DE REG. 1538 (5/1/00) STATED INCORRECTLY THAT RULE 8.4.1.1.2 WAS ADOPTED BY THE COMMISSION. THE RULE WAS NOT ADOPTED BY THE COMMISSION DUE TO THE PASSAGE OF HOUSE JOINT RESOLUTION 10.**

## 8.4 Testing

## 8.4.1 Reporting to the Test Barn

~~8.4.1.1 The official winning horse and any other horse ordered by the Commission and/or the State Steward or judges shall be taken to the Test Barn to have a blood, urine and/or other specimen sample taken at the direction of the State Commission veterinarian. Horses shall be selected for post-racing testing according to the following protocol:~~

8.4.1.1.1 At least one horse in each race, selected by the judges from among the horses finishing in the first four positions in each race, shall be tested.

~~**[8.4.1.1.2 Any claimed horse not otherwise selected for testing shall be tested if requested by the claimant at the time the claim form is submitted in accordance with these rules. If such a request is made by a claimant, then the claimed horse shall not be permitted to be entered to race until the Commission chemist issues a report on his forensic analysis of the samples taken from the horse.]**~~

8.4.1.1.3 Horses selected for testing shall be taken to the Test Barn or Test Stall to have a blood, urine and/or other specimen sample taken at the direction of the State veterinarian.

8.4.1.2 Random or extra testing, including pre-race testing, may be required by the State Steward or judges, or by the Commission, at any time on any horse on association grounds.

8.4.1.3 Unless otherwise directed by the State Steward, judges or the State Commission veterinarian, a horse that is selected for testing must be taken directly to the Test Barn.

## 8.4.2 Sample Collection

8.4.2.1 Sample collection shall be done in accordance with the RCI Drug Testing and Quality Assurance Program External Chain of Custody Guidelines, or other guidelines and instructions provided by the State Commission veterinarian.

8.4.2.2 The State Commission ~~V~~veterinarian shall determine a minimum sample requirement for the primary testing laboratory. A primary testing laboratory must be approved by the Commission.

## 8.4.3 Procedure for Taking Specimens

8.4.3.1 Horses from which specimens are to be drawn shall be taken to the detention area at the prescribed time and remain there until released by the Commission veterinarian. Only the owner, trainer, groom, or hot walker of horses to be tested shall be admitted to the detention area without permission of the Commission veterinarian.

8.4.3.2 Stable equipment other than equipment necessary for washing and cooling out a horse shall be prohibited in the detention area.

8.4.3.2.1 Buckets and water shall be furnished by the Commission veterinarian.

8.4.3.2.2 If a body brace is to be used, it shall be supplied by the responsible trainer and administered only with the permission and in the presence of the Commission veterinarian.

8.4.3.2.3 A licensed veterinarian shall attend a horse in the detention area only in the presence of the Commission veterinarian.

8.4.3.3 One of the following persons shall be present and witness the taking of the specimen from a horse and so signify in writing:

8.4.3.3.1 The owner;

8.4.3.3.2 The responsible trainer who, in the case of a claimed horse, shall be the person in whose name the horse raced; or

8.4.3.3.3 A stable representative designated by such owner or trainer.

## 8.4.3.4

8.4.3.4.1 All urine containers shall be supplied by the Commission laboratory and shall be sealed with the laboratory security seal which shall not be broken, except in the presence of the witness as provided by (subsection (3)) subsection 8.4.3.3 of this section.

8.4.3.4.2 Blood vacutainers will also be supplied by the Commission laboratory in sealed packages as received from the manufacturer.

8.4.3.5 Samples taken from a horse, by the Commission veterinarian or his assistant at the detention barn, shall be collected and in double containers and designated as the "primary" and "secondary" samples.

8.4.3.5.1 These samples shall be sealed with tamper-proof tape and bear a portion of the multiple part "identification tag" that has identical printed numbers only. The other portion of the tag bearing the same printed identification number shall be detached in the presence of the witness.

8.4.3.5.2 The Commission veterinarian shall:

8.4.3.5.2.1 Identify the horse from which the specimen was taken.

8.4.3.5.2.2 Document the race and day, verified by the witness; and

8.4.3.5.2.3 Place the detached portions of the identification tags in a sealed envelope for delivery only to the stewards.

8.4.3.5.3 After both portions of samples have been identified in accordance with this section, the "primary" sample shall be delivered to the official chemist designated by the Commission.

8.4.3.5.4 The "secondary" sample shall remain in the custody of the Commission veterinarian at the detention area and urine samples shall be frozen and blood samples refrigerated in a locked refrigerator/freezer.

8.4.3.5.5 The Commission veterinarian shall take every precaution to ensure that neither the Commission chemist nor any member of the laboratory staff shall know the identity of the horse from which a specimen was taken prior to the completion of all testing.

8.4.3.5.6 When the Commission chemist has reported that the "primary" sample delivered contains no prohibited drug, the "secondary" sample shall be properly disposed.

8.4.3.5.7 If after a horse remains a reasonable time in the detention area and a specimen can not be taken from the horse, the Commission veterinarian may permit the horse to be returned to its barn and usual surroundings for the taking of a specimen under the supervision of the Commission veterinarian.

8.4.3.5.8 If one hundred (100) milliliters (ml.) or less of urine is obtained, it will not be split, but will be considered the "primary" sample and will be tested as other "primary" samples.

8.4.3.5.9 Two (2) blood samples shall be collected in twenty (20) milliliters vacutainers, one for the "primary" and one for the "secondary" sample.

8.4.3.5.10 In the event of an initial finding of a prohibited ~~drug substance~~ or in violation of these Rules & Regulations, the Commission chemist shall notify the Commission, both orally and in writing, and an oral or written notice shall be issued by the Commission to the owner and trainer or other responsible person no more than twenty-four (24) hours after the receipt of the initial finding, unless extenuating circumstances require a longer period, in which case the Commission shall provide notice as soon as possible in order to allow for testing of the "secondary" sample; provided, however, that the procedure for testing the 'secondary' sample shall not apply to, and there shall be no right to such testing of a 'secondary' sample with respect to, a finding of a prohibited level of total carbon dioxide in a submitted blood sample. ~~provided, however, that with respect to a finding of a prohibited level of total carbon dioxide in a blood sample, there shall be no right to testing of the 'secondary' sample unless such finding initially is made at the racetrack on the same day that the tested horse raced, and in every such circumstances the 'secondary' sample shall be transported to a referee~~

laboratory designated by the Commission for testing.

8.4.3.5.10.1 If testing of the "secondary" sample is desired, the owner, trainer, or other responsible person shall so notify the Commission in writing within 48 hours after notification of the initial positive test or within a reasonable period of time established by the Commission after consultation with the Commission chemist. The reasonable period is to be calculated to insure the integrity of the sample and the preservation of the alleged illegal substance.

8.4.3.5.10.2 Testing of the "secondary" samples shall be performed at a referee laboratory selected by representatives of the owner, trainer, or other responsible person from a list of not less than two (2) laboratories approved by the Commission.

8.4.3.5.11 The Commission shall bear the responsibility of preparing and shipping the sample, and the cost of preparation, shipping, and testing at the referee laboratory shall be assumed by the person requesting the testing, whether it be the owner, trainer, or other person charged.

8.4.3.5.11.1 A Commission representative and the owner, trainer, or other responsible person or a representative of the persons notified under these Rules and Regulations may be present at the time of the opening, repackaging, and testing of the "secondary" sample to ensure its identity and that the testing is satisfactorily performed.

8.4.3.5.11.2 The referee laboratory shall be informed of the initial findings of the Commission chemist prior to making the test.

8.4.3.5.11.3 If the finding of the referee laboratory is proven to be of sufficient reliability and does not confirm the finding of the initial test performed by the Commission chemist and in the absence of other independent proof of the administration of a prohibited drug of the horse in question, it shall be concluded that there is insubstantial evidence upon which to charge anyone with a violation.

8.4.3.5.12 The Commission veterinarian shall be responsible for safeguarding all specimens while in his possession and shall cause the specimens to be delivered only to the Commission chemist as soon as possible after sealing, in a manner so as not to reveal the identity of a horse from which the sample was taken.

8.4.3.5.13 If an Act of God, power failure, accident, strike or other action beyond the control of the Commission occurs, the results of the primary official test shall be accepted as prima facie evidence.

1 DE Reg. 505 (11/01/97)

**Symbol Key**

Roman type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text. Language which is ~~stricken~~ through indicates text being deleted.

**Proposed Regulations**

Under 29 **Del.C.** §10115 whenever an agency proposes to formulate, adopt, amend or repeal a regulation, it shall file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the Register of Regulations pursuant to §1134 of this title. The notice shall describe the nature of the proceedings including a brief synopsis of the subject, substance, issues, possible terms of the agency action, a reference to the legal authority of the agency to act, and reference to any other regulations that may be impacted or affected by the proposal, and shall state the manner in which persons may present their views; if in writing, of the place to which and the final date by which such views may be submitted; or if at a public hearing, the date, time and place of the hearing. If a public hearing is to be held, such public hearing shall not be scheduled less than 20 days following publication of notice of the proposal in the Register of Regulations. If a public hearing will be held on the proposal, notice of the time, date, place and a summary of the nature of the proposal shall also be published in at least 2 Delaware newspapers of general circulation; The notice shall also be mailed to all persons who have made timely written requests of the agency for advance notice of its regulation-making proceedings.

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**DEPARTMENT OF  
ADMINISTRATIVE SERVICES  
DIVISION OF PROFESSIONAL REGULATION  
BOARD OF PHARMACY**

Statutory Authority: 24 Delaware Code,  
Section 2509 (24 **Del.C.** 2509)

PLEASE TAKE NOTICE, pursuant to 29 Del. C. §2509, the Delaware Board of Pharmacy (Board) has developed and proposes to adopt changes to Regulation V to include a new definition for "container" and to clarify the activity allowed for supportive personnel to insure a final check of a prescription by a pharmacist unless there has been an exemption by the Board. The proposal represents substantive changes to the proposed regulation that was published but not adopted. Only the sections of Regulation V that are affected are printed.

A public hearing will be held on the Proposed changes on August 9, 2000 at 10:00 a.m. in the Jesse Cooper Building, Room 309 (third floor conference room), Federal and Water Streets, Dover, DE 19901. The Board will receive and consider input from any person on the proposed Regulation. Written comment can be submitted at any time prior to the hearing in care of Gradella E. Bunting at the above address. In addition to publication in the Register of Regulations and two newspapers of general circulation, copies of the proposed regulation can be obtained from Gradella E. Bunting by calling (302)739-4798.

**Regulation V.  
Dispensing**

**A. Definitions**

1. Dispensing - To furnish or deliver a drug to an ultimate user by or pursuant to the lawful order of a practitioner; including the preparation, packaging, labeling or compounding necessary to prepare the drug for that delivery.

2. Pertinent Patient Medication Information - Information which increases the patient's ability to minimize the risks and enhance the benefits of drug use. The type of information the pharmacist should consider is contained in the latest edition of USP DI "Advice for the Patient."

3. Delivery - The transfer of a dispensed prescription to the ultimate user (patient) or his/her agent.

4. Agent - An employee of the pharmacy supervised by the pharmacist or a person acting on behalf of the ultimate user.

5. New Medication - A medication not previously dispensed by the pharmacy for the ultimate user.

6. Patient Counseling - The offer to discuss the patient's prescription made by the pharmacist or the pharmacist's designee in a face-to-face communication with the patient or his/her agent, unless in the professional judgment of the pharmacist it is deemed impracticable and in such instances, it would be permissible for the offer to counsel to be made through alternative means.

7. Compounding - The art of the extemporaneous preparation and manipulation of drugs as a result of a practitioner's prescription order or initiative based on the practitioner/patient/pharmacist relationship in the course of professional practice, including the reconstitution of



powders for administration and the preparation of drugs in anticipation of drug orders based on routine, regularly observed prescribing patterns. Pharmaceutical compounding must be in compliance with FFDCA Section 503A and any regulations promulgated by FDA concerning compounding, pertaining to this section.

8. Supportive personnel - A person who is not registered as an intern or pharmacist with the Board who may perform tasks as authorized by this Regulation.

9. Cell - Any container which holds the medication for automatic dispensing.

10. Prescription - An order for medication which is dispensed to or for an ultimate user, but does not include an order for medication which is dispensed for immediate administration to the ultimate user, (e.g., an order to dispense a drug to a bed patient for immediate administration in a hospital is not a prescription.)

11. Automated Data Processing System (ADP) - A system utilizing computer software and hardware for the purposes of recordkeeping.

12. CRT - Cathode Ray Tube used to impose visual information on a screen.

13. Computer - Programmable electronic device, capable of multifunctions including but not limited to storage, retrieval and processing of information.

14. Controlled Substance - Those drug items regulated by Federal (CSA of 1970) and/or State Controlled (dangerous) Substances Act.

15. Downtime - That period of time when a computer is not operable.

16. Prescriber - A practitioner authorized to prescribe and acting within the scope of this authorization.

17. Prescription - A written order from a practitioner authorized to prescribe and acting within the scope of this authorization, (other terminology: prescription order) or a telephone order reduced to writing by the pharmacist.

18. Facsimile (FAX) Prescription - A facsimile prescription is an order which is transmitted by an electronic device over telephone lines which sends an exact copy image to the receiver (pharmacy).

19. Reduced to Writing

a. For new prescriptions this means the preparation of a paper document containing all the information required for a written prescription including the State requirement (Section 2553) for drug product selection;

b. For a refill authorization, it may be handled as a new prescription as in (a) above, or by placing on the original prescription or the patient profile (whichever document is consistently used to document refills) the date, a statement "O.K. for 'x' number of additional refills", or words of similar import, and the pharmacist's initials. In no instance, shall the refill authorizations exceed the legal limits established by State and Federal laws.

c. If the prescriber authorizing additional refills

differs from the Prescriber whose name appears on the signature line of the original prescription, then that authorization is considered a new prescription and must be handled as described in (a).

20. Regulatory Agency - Any Federal or State agency charged with enforcement of pharmacy or drug laws and regulations.

21. Printout - A hard copy produced by computer that is readable without the aid of any special device.

22. Stop Date - A date established by an appropriate authority which indicates when medication will no longer be administered or dispensed in the absence of a specific time period directed by the prescriber.

23. Common Data Base - A file or data base created by ADP that enables authorized users to have common access to this file regardless of physical location.

24. Final Container – is that which holds the article, designed to hold a quantity of drug product intended for administration as a single dose, multiple dose, or a single finished device intended for use promptly after the container is opened.

B. The practice of dispensing shall include, but not be limited to the following acts which shall be performed only by a pharmacist, or a pharmacy intern or student participating in an approved College of Pharmacy coordinated, practical experience program.

1. Receive oral prescriptions and reduce them immediately to writing.

2. Certification of the prescription order - (This involves authenticating the prescription, confirming proper dosage and instructions, and reviewing for incompatibility, etc.)

3. Record refill dates and initials of the dispensing pharmacist on the prescription (or on another appropriate uniformly maintained readily retrievable record such as the medication records.)

C. Patient Counseling

1. Before dispensing or delivering a new medication to a patient or his or her agent, a pharmacist or pharmacy intern under the direct supervision of the pharmacist, shall conduct a prospective drug review. A pharmacist or pharmacy intern may conduct a prospective drug review before refilling a prescription to the extent deemed appropriate by the pharmacist or pharmacy intern in his/her professional judgment. Such review shall include screening for potential drug therapy problems due to therapeutic duplication, drug-drug interactions, including serious interactions with over-the-counter drugs, drug-disease contraindications, if disease is known, incorrect drug dosage or duration of drug treatment, drug-allergy interactions, and clinical abuse or misuse based on available information received by the pharmacist.

2. Except when a prescriber requests that information regarding a prescribed drug not be given to a specific patient, a pharmacist or a pharmacy intern under the direct supervision of a pharmacist shall, with each new medication dispensed, provide counseling to the patient or the patient's agent on pertinent medication information. The counseling may include, but not be limited to the following:

- a. the name and description of the prescribed drug;
- b. the dosage and the dosage form;
- c. the method and route of administration;
- d. the duration of the prescribed drug therapy;
- e. any special directions and precautions for preparation, administration, and use by the patient that the pharmacist determines are necessary;
- f. common severe side effects or adverse effects or interactions and therapeutic contraindications that may be encountered, how to avoid them, and what actions should be taken if they occur;
- g. patient techniques for self-monitoring of the drug therapy;
- h. proper storage;
- i. prescription refill information;
- j. the action to be taken in the event of a missed dose; and
- k. current over-the-counter medication use.

3. This section does not apply to a pharmacist dispensing drugs for inpatient use in a hospital or other institution where the drug is to be administered by a nurse or other appropriate health care provider.

4. Nothing in this section requires a pharmacist or pharmacy intern under the direct supervision of a pharmacist, to provide patient counseling when a patient or the patient's agent refuses the counseling. There must be a record in a uniform place that documents a patient's acceptance or refusal of counseling. The record must indicate who made the offer to counsel.

5. If the dispensed prescription is delivered by an agent of the pharmacy when the pharmacist is not present (i.e. home delivery, pharmacist off duty and non-resident pharmacies) written or printed information shall be included with the prescription. The patient or his/her agent shall be informed that the pharmacist will be available for consultation.

6. The pharmacist shall in his/her professional judgment refill prescriptions in keeping with the number of doses ordered and the directions for use.

7. The pharmacist who dispenses the original prescription shall hand-sign or initial the prescription. Initials mechanically or electronically generated are acceptable in lieu of the above provided that the pharmacist verifies either on a daily printout or in a bound log book daily that the information on the prescription is correct. The verification must be hand-signed and dated by the

pharmacist.

#### D. Supportive personnel

##### 1. Qualifications and training

a) The pharmacist-in-charge is responsible for ensuring proper training of all supportive personnel. The actual training may be delegated to a pharmacist or other trained supportive personnel.

b) The areas of training required are to be determined by the pharmacist-in-charge and will be appropriate to the practice site and responsibilities assigned to the supportive personnel. Areas of training shall include:

- 1) general drug and dosage form knowledge
- 2) medical terminology
- 3) pharmaceutical calculations
- 4) prescription labeling requirements
- 5) general filling/dispensing responsibilities
- 6) patient profile record system requirements
- 7) requirements for patient counseling
- 8) confidentiality
- 9) safety practices
- 10) inventory functions
- 11) knowledge of applicable State and Federal

Statutes and Regulations

- 12) other site-specific parameters

c) The general content of the training program must be maintained in the policy and procedure manual.

d) Documentation of successful training in specific areas by oral or written evaluation will be maintained and will be available for inspection by the Board of Pharmacy.

##### 2. Supervision

Supportive personnel must be supervised by a registered pharmacist who will be responsible for the activities of these persons.

##### 3. Activities allowed

a) Supportive personnel will be allowed to perform only those duties permitted by this regulation.

b) Supportive personnel may aid in the dispensing of prescriptions as authorized in Section 2513 under the supervision of a pharmacist by performing the following tasks:

- 1) Obtaining the medication from stock.
- 2) Typing the label after the pharmacist has

interpreted the directions.

3) Counting, pouring and selecting prefabricated medications and selecting individual prepackaged unit dose medication provided that these are not in conflict with the state and federal law (Federal Comprehensive Controlled Substances Act) and that ~~such selection is properly checked by the pharmacist before the dose is authorized.~~ a final check by the pharmacist is made after the medication is placed in the final container prior to dispensing and administration to the patient. There will be a

final check by a licensed pharmacist prior to dispensing and administration, except where the Board of Pharmacy grants, in writing, an exemption for good cause shown.

c) Compounding is the responsibility of the pharmacist or pharmacy intern under the direct supervision of the pharmacist. All compounding must be in compliance with FFDCA Section 503A and any regulations promulgated by FDA concerning compounding pertaining to this section. The pharmacist may utilize the assistance of supportive personnel if the following is performed:

1) The formulation is developed by the pharmacist before proceeding with the compounding.

2) The compounding ingredients are checked by the pharmacist before proceeding with the compounding.

3) Every weight and measurement is checked by the pharmacist before proceeding with the compounding.

4) The finished product is checked by the pharmacist before dispensing.

5) A log is maintained showing the identity of the person actually compounding the medication and the identity of the pharmacist who has performed each of the checks indicated above for each step of the procedure. If policies and procedures are in place ensuring adequate checks by the pharmacist per regulation, the requirement for a log will be waived.

d) Only supportive personnel or persons being trained as supportive personnel as required by this regulation, may perform the activities defined by this regulation.

#### **E. Automatic Dispensing Devices**

If any automatic counting device is used by a pharmacy, each cell shall have clearly displayed thereon, the date filled, the name of the drug, the batch number, the manufacturer's name, and the expiration date of the particular batch number. No drug can be added to the cell until the present supply is depleted.

#### **F. Authorization for renewal of prescriptions**

A prescription written for medication which, pursuant to State and Federal law, may be sold, dispensed, or furnished only upon prescription, shall not be renewed without specific authorization of the prescriber. Refills beyond one year of the date of the original prescription shall not be dispensed without further authorization of the prescriber.

#### **G. Mandatory Patient Profile Record System**

1. A patient profile record system must be maintained at all pharmacies for persons for whom prescriptions are dispensed. The patient profile system shall be devised so as to entitle the immediate retrieval of information necessary to enable the dispensing pharmacist to identify previously

dispensed medication at the time a prescription is presented for dispensing.

2. The following information shall be recorded by a pharmacist or designee:

a. The family name and first name of the person for whom the medication is intended (the patient);

b. The address of the patient and phone number;

c. The patient's age, or date of birth, and gender;

d. The original date the medication is dispensed pursuant to the receipt of a physician's prescription;

e. The number or designation identifying the prescription;

f. The prescriber's name;

g. The name, strength, quantity, directions and refill information of the drug dispensed;

h. The initials of the dispensing pharmacist and the date of dispensing medication as a renewal (refill) if said initials and such date are not recorded on the original prescription;

i. If the patient refuses to give all or part of the required information, the pharmacist shall so indicate and initial in the appropriate area.

j. Pharmacist comments relevant to the patient's drug therapy, including any other information peculiar to the specific patient or drug.

3. The pharmacist or pharmacy intern under the direct supervision of a pharmacist shall attempt to ascertain and shall record any allergies and idiosyncrasies of the patient and any chronic disease states and frequently used over-the-counter medication as communicated to the pharmacist by the patient. If the answer is none, this must be indicated on the profile.

4. Upon receipt of a new prescription, a pharmacist or pharmacy intern under the direct supervision of a pharmacist must examine the patient's profile record before dispensing the medication to determine the possibility of a harmful drug interaction or reaction. Upon recognizing a potential harmful reaction or interaction, the pharmacist shall take appropriate action to avoid or minimize the problem which shall, if necessary, include consultation with the physician.

5. A patient profile record must be maintained for a period of not less than one year from the date of the last entry in the profile record unless it is also used as a dispensing record.

#### **H. Exchange of Valid Non-Controlled Prescriptions Between Pharmacies**

1. Verbal Exchange of Prescriptions - When a pharmacy receives a verbal request for a prescription transfer, it may be honored provided that:

a. The request comes from a registered pharmacist.

b. The copy is immediately reduced to writing and contains the information required on a written

prescription as listed in Regulation V, and includes the first and last name of the pharmacist transmitting the information.

c. The prescription used for refills must be clearly identified as a copy.

d. The copy shows the date and the file number of the original prescription and indicates the name and address of the pharmacy providing the copy.

e. The copy shows the last date of dispensing.

f. Only the actual number of refills remaining are indicated.

g. A notation indicating a copy was given and refills are no longer valid must be placed on either the original prescription or patient profile. The document used must be the same one used for the recording of refills per the pharmacy's policy.

2. A copy prepared or transmitted that does not meet the requirements of this Regulation is deemed to be an invalid prescription.

3. Written copies of prescriptions are for information only and are not valid for refilling.

#### **I. Automated Data Processing Systems**

##### **1. PROFILES**

When ADP's are used to maintain patient profile records, all the requirements of Delaware Pharmacy Regulation V must be met.

##### **2. PRESCRIPTION (Drug Order) INFORMATION**

Prescription information (drug order) shall include, but not be limited to:

a. Original dispensing date

b. Name and address of patient (patient location if in an institution)

c. Name of prescriber

d. DEA number of prescriber in the case of a controlled substance

e. Name, strength, dosage form and quantity, (or Stop Date), and route of administration if other than oral form of drug prescribed

f. Renewals authorized

g. Directions of use for patient

##### **3. RECORDS OF DISPENSING**

Records of dispensing for original and refill prescriptions are to be made and kept by pharmacies for three years. Information must be immediately accessible for a period of not less than one year from the date of last entry. Information beyond one year but up to three years from the date of last entry may be maintained off-line but must be produced no later than five days upon request from proper authorities. The information shall include, but not be limited to:

a. Quantity dispensed

b. Date of dispensing

c. Serial Number (or equivalent if an institution)

d. The identification of the pharmacist

responsible for dispensing

e. Record of renewals to date

f. Name and strength of medicine

##### **4. RECORD RETRIEVAL (DOCUMENTATION OF ACTIVITY)**

Any such ADP system must provide via CRT display and or hard copy printout a current history of all authorized prescription activity. This information shall include, but not be limited to:

a. Serial number of prescription (equivalent if an institution)

b. Date of processing

c. Quantity dispensed

d. The identification of the pharmacist responsible for dispensing

e. Medication dispensed

##### **5. AUXILIARY RECORDKEEPING SYSTEM**

An auxiliary recordkeeping system shall be established for the documentation of renewals if the ADP is inoperative for any reason. The auxiliary system shall insure that all renewals are authorized by the original prescription and that the maximum number of renewals are not exceeded. When the ADP is restored to operation, the information regarding prescriptions dispensed and renewed during the inoperative period shall be entered into the automated data processing system.

##### **6. COMMON DATA BASE**

Two or more pharmacies may establish and use a common data file or base to maintain required or pertinent dispensing information. Pharmacies using such a common file are not required to transfer prescriptions or information for dispensing purposes between or among pharmacies participating in the same common prescription file or data base; provided however, any such common file must contain complete and adequate records of such prescription and renewals dispensed. Where common data base is used, this shall not be considered a transfer under Board Regulation V for non-controlled substances.

##### **7. TRANSFER OF PRESCRIPTIONS VIA ADP**

A pharmacist may transfer a prescription electronically (ADP) for Schedule III, IV, or V controlled substances to another pharmacy for renewal purposes in accordance with Title 21, Code of Federal Regulations Section 1306.26. A pharmacist may transfer a prescription electronically (ADP) for non-controlled drug for renewal purposes in accordance with current State Regulations.

a. Any pharmacy using ADP must comply with all applicable State and Federal regulations.

b. A pharmacy shall make arrangements with the supplier of data processing services or materials to assure that the pharmacy continues to have adequate and complete prescription and dispensing records if the relationship with such supplier terminates for any reason. A pharmacy shall assure continuity in maintenance of records.

c. The computer record shall reflect the fact that the prescription order has been transferred, the name of the pharmacy to which it was transferred, the date of transfer, the name of the pharmacist transferring information, and any remaining refill information, if applicable.

d. The pharmacist receiving the transferred prescription drug order shall reduce it to writing with the following information:

1. Write the word "TRANSFER" on the face of the transferred prescription.

2. Provide all information required to be on the prescription drug order pursuant to State and Federal laws and regulations.

e) To maintain the confidentiality of patient's prescriptions (drug orders) or other pertinent records, there must exist adequate safeguards of security. This shall also pertain to prevent non-user access.

#### J. Electronic Transmission Of Prescriptions

1. All Prescription Drug Orders communicated by way of Electronic Transmission shall:

a. be transmitted directly to a Pharmacist in a licensed Pharmacy of the patient's choice with no intervening Person having access to the Prescription Drug Order;

b. identify the transmitter's phone number for verbal confirmation, the time and date of transmission, and the identity of the Pharmacy intended to receive the transmission, as well as any other information required by Federal or State law;

c. be transmitted by an authorized Practitioner or his designated agent; and

d. be deemed the original Prescription Drug Order provided it meets the requirements of this subsection.

2. The prescribing Practitioner may authorize his agent to communicate a Prescription Drug Order orally or by way of Electronic Transmission to a Pharmacist in a licensed Pharmacy, provided that the identity of the transmitting agent is included in the order.

3. The Pharmacist shall exercise professional judgment regarding the accuracy, validity, and authenticity of the Prescription Drug Order communicated by way of Electronic Transmission consistent with existing Federal or State laws and rules.

4. All electronic equipment for receipt of Prescription Drug Orders communicated by way of Electronic Transmission shall be maintained so as to ensure against unauthorized access.

5. Persons other than those bound by a confidentiality agreement pursuant to Section 2.A. (2)(k) shall not have access to Pharmacy records containing Confidential Information or personally identifiable information concerning the Pharmacy's patients.

6. Controlled substance prescriptions may only be

electronically transmitted via a facsimile.

7. Facsimile prescriptions must meet the following requirements in addition to the above listed electronic Transmission requirements.

a. The prescription order shall include the fax number of the transmitter, the number of transmitted pages, the name, phone number, and electronic number of the pharmacy intended to receive the transmission, and a confidentiality statement in bold type stating the electronic transmission should not be seen by unauthorized persons.

b. Unless the prescription is written for a schedule II controlled substance, the prescriber should not issue the written prescription to the patient.

c. A facsimile transmitted prescription order must be reduced to writing, unless received as a non-fading document, with a notation that the order was received by facsimile.

d. The receiving facsimile machine must be in the prescription department to protect patient-pharmacist-authorized prescriber confidentiality and security.

e. Both non-controlled and controlled substance prescriptions may be transmitted via facsimile following state and federal requirements. All prescription orders for controlled substances shall be hand-signed by the practitioner.

#### K. Return of Medications and Supply

1. Prescriptions and items of personal hygiene shall not be accepted for return or exchange by any pharmacist or pharmacy after such prescription or items of personal hygiene have been taken from the premises where sold, distributed or dispensed.

2. Products under the direct control of a health care professional which are packaged in manufacturer unit dose or tamper-proof unopened bulk containers, tamper proof seal in tact, including unused multi-dose punch cards, may be redispensed in accordance with expiration dating in customized patient medication package. Partially used products may not be redispensed. Nothing in this regulation precludes the Federal laws and regulations.

Effective Date: October 11, 1996

Effective Date: April 14, 1997 Section D revised

Effective Date: June 11, 1998

Amended Effective September 11, 1999

## **DIVISION OF PROFESSIONAL REGULATION RULES & REGULATIONS GOVERNING THE PRACTICE OF RESPIRATORY CARE**

Statutory Authority: 24 Delaware Code,  
Section 1770B(c)(5) (24 **Del.C.** 1770B(c)(5))

### **RESPIRATORY CARE ADVISORY COUNCIL OF THE DELAWARE BOARD OF MEDICAL PRACTICE**

PLEASE TAKE NOTICE, pursuant to 29 Delaware Code Chapter 101 and 24 Delaware Code Section 1770B (e)(5), the Respiratory Care Advisory Council of the Delaware Board of Medical Practice has developed and proposes to repeal section 8.5.2.6, Accumulation of Continuing Education, and renumber the rest of the section and clarify the time limitations for obtaining continuing education in sections 8.5.1. and 8.5.2.

A public hearing will be held on the proposed Rules and Regulations on Tuesday, August 7, 2000 at 2:00 p.m. in the Second Floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware 19904. The Council will receive and consider input in writing from any person on the proposed Rules and Regulations. Any written comments should be submitted to the Council in care of Doug Reed at the above address. Final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed Rules and Regulations or to make comments at the public hearing should contact Doug Reed at the above address or by calling (302) 739-4522 extension 229.

This notice will be published in two newspapers of general circulation not less than twenty (20) days prior to the date of hearing.

- 1.0 Definitions
- 2.0 Purpose
- 3.0 Standards of Practice for the Respiratory Practitioner
- 4.0 Standards Related to the Respiratory Care Practitioner's Competence and Responsibilities
- 5.0 Administration of Medications
- 6.0 Disciplinary Proceedings
- 7.0 Working Student Respiratory Care Practitioner
- 8.0 Continuing Education
- 9.0 Renewal of License
- 10.0 Application for a License
- 11.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

#### 1.0 Definitions

"Board" - means Delaware Board of Medical Practice.

"Certified Respiratory Therapy Technician (CRTT)" - means the credential awarded by the NBRC to individuals who pass the certification examination for entry level

respiratory therapy practitioners.

"Council" - means the Respiratory Care Practice Advisory Council of the Board of Medical Practice.

"NBRC" means the National Board for Respiratory Care, Inc.

"Programs Approved by the Board" - means initial course of study programs accredited by the Joint Review Committee for Respiratory Therapy Education (JRCRTE) or its successor organizations which have been approved by the Board.

"Registered Respiratory Therapist (RRT)" - means the credential awarded by the NBRC to individuals who pass the registry examination for advanced respiratory therapy practitioners.

"Respiratory Care" - means treatment, management, diagnostic testing, control and care of patients with deficiencies and abnormalities associated with the cardiopulmonary system under the direction of a physician. Respiratory care includes inhalation therapy and respiratory therapy under 24 **Del.C.** §1770B(a)(2), Medical Practices Act.

"Respiratory Care Practitioner (RCP)" - means an individual who practices respiratory care under 24 **Del.C.** §1770B(a)(1) and (7), Medical Practices Act.

"Student Respiratory Care Practitioner (Student-RCP)" - means an individual enrolled in an accredited Respiratory Care Program recognized and approved by the Board.

"Working Student Respiratory Care Practitioner" - means a student respiratory care practitioner who is employed to perform respiratory care under a limited scope of practice established by the Board.

"General Supervision" - means whether by direct observation and monitoring, protocols approved by physicians, or orders written or verbally given by physicians.

"Direct Supervision" - means supervising licensee or supervising physician will be present and immediately available within the treatment area.

#### 2.0 Purpose

2.1 The purpose of the standards is to establish minimal acceptable levels of safe practice to protect the general public and to serve as a guide for the Board to evaluate safe and effective practice of respiratory care.

#### 3.0 Standards of Practice for the Respiratory Care Practitioner

3.1 The respiratory care practitioner shall conduct and document respiratory care assessments of individuals and groups by various appropriate means including but not limited to the following:

3.1.1 Collecting objective and subjective data from observations, examinations, physiologic tests, interviews and written records in an accurate and timely manner.

3.1.2 Sorting, selecting, reporting, and recording

the data.

3.1.3 Analyzing data.

3.1.4 Validating, refining and modifying the data by using available resources including interactions with the patient, family, and health team members.

3.1.5 Evaluating data.

3.1.6 Respiratory care practitioners shall establish and document data that serves as the basis for the strategy of care.

3.2 Respiratory care practitioners may develop strategies of care such as a treatment plan.

3.3 Respiratory care practitioners may participate under the direction and supervision of a physician in the implementation of patient care.

#### 4.0 Standards Related to the Respiratory Care Practitioner's Competence and Responsibilities

4.1 Respiratory care practitioners shall:

4.1.1 Have knowledge of the statutes and regulations governing the practice of respiratory care.

4.1.2 Accept responsibility for competent practice of respiratory care.

4.1.3 Obtain instructions and supervision from physicians.

4.1.4 Function as a member of a health care team by collaborating with other members of the team to provide appropriate care.

4.1.5 Consult with respiratory care practitioners and others and seek guidance as necessary.

4.1.6 Obtain instruction and supervision as necessary when implementing respiratory care techniques.

4.1.7 Contribute to the formulation, interpretation, implementation and evaluation of objectives and policies related to the practice of respiratory care within the employment setting.

4.1.8 Report unsafe respiratory care practice and conditions to the Respiratory Care Practice Advisory Council, (Council), or other authorities as appropriate.

4.1.9 Practice without unlawful discrimination as to age, race, religion, sex, national origin or disability.

4.1.10 Respect the dignity and rights of patients regardless of social or economic status, personal attributes or nature of health problems.

4.1.11 Respect patients' right-to-privacy by protecting confidentiality unless obligated by law to disclose the information.

4.1.12 Respect the property of patients and their families.

4.1.13 Teach safe respiratory care practice to other health care workers as appropriate.

#### 5.0 Administration of Medications

5.1 Respiratory care practitioners may administer pharmacological agents, aerosols, or medical gases via the

respiratory route. Administration of medication by routes other than the respiratory route require the direct supervision of a physician.

5.2 A respiratory care practitioner shall not deliver any medication unless the order, written or oral by a physician or other person authorized by the Board of Medical Practice, to prescribe that class of medication includes:

5.2.1 Patient identification

5.2.2 Date of the order

5.2.3 Time of the order

5.2.4 Name of medication

5.2.5 Dosage

5.2.6 Frequency of administration

5.2.7 Route of administration

5.2.8 Method of administration

No respiratory care practitioner holding a permit or a license in the state of Delaware may administer medications for the testing or treatment of cardiopulmonary impairment for which the respiratory care provider is untrained or incompetent.

5.3 Respiratory care practitioners must be able to document appropriate training and proficiency on the route of medication delivery, drug pharmacology, and dosage calculations for any cardiopulmonary medications for which they are responsible to administer. Appropriate training includes but is not limited to the following components:

5.3.1 Pharmacology. Subject matter shall include terminology, drug standards, applicable laws and legal aspects, identification of drugs by name and classification, and the principles of pharmacodynamics of medications used in the treatment and testing of cardiopulmonary impairment.

5.3.2 Techniques of drug administration. Subject matter shall include principles of asepsis, safety and accuracy in drug administration, applicable anatomy and physiology, and techniques of administration and any route of administration for cardiopulmonary medications that fall within the legal scope of practice of a respiratory care practitioner.

5.3.3 Dosage calculations. Subject matter shall include a review of arithmetic and methods of calculation required in the administration of drug dosages.

5.3.4 Clinical experience. Subject matter shall include clinical experience in administration of the cardiopulmonary medication(s), planned under the direction of a qualified respiratory care practitioner or other qualified health care provider responsible for teaching cardiopulmonary medication administration.

5.3.5 Role of the respiratory care practitioner in administration of cardio-pulmonary medications. Subject matter shall include constraints of medication administration under the legal scope of practice for respiratory care practitioners, the rationale for specific respiratory care in relation to drug administration; observations and actions associated with desired drug effects, side effects and toxic

effects; communication between respiratory care practitioners and other health care teams; respiratory care practitioner - client interactions; and the documentation of cardiopulmonary medication administration.

5.4 Each respiratory care practitioner shall maintain a record that documents training and proficiency and medications that each practitioner is authorized to administer. At the request of the Council such records may be audited, reviewed, or copied.

5.5 Documentation of medication administration by the respiratory care practitioner shall include at a minimum:

- 5.5.1 Patient identification
- 5.5.2 Date of the order
- 5.5.3 Time of the order
- 5.5.4 Name of medication
- 5.5.5 Dosage
- 5.5.6 Frequency of administration
- 5.5.7 Route of administration
- 5.5.8 Method of administration
- 5.5.9 Respiratory care practitioner's name
- 5.5.10 Date and time of administration
- 5.5.11 Documentation of effectiveness
- 5.5.12 Documentation of adverse reactions and notifications if any

#### 6.0 Disciplinary Proceedings

6.1 The license or permit of a respiratory care practitioner or student found to have committed unprofessional conduct may be subject to revocation, suspension, or non-renewal. The practitioner or student may be placed on probation subject to reasonable terms and conditions, or reprimanded.

6.2 Any licensed respiratory care practitioner found, after notice and hearing, to have engaged in behavior in his or her professional activity which is likely to endanger the public health, safety or welfare or who is unable to render respiratory care services with reasonable skill or safety to patients because of mental illness or mental incompetence, physical illness or excessive use of drugs including alcohol may have his or her license revoked, suspended, not renewed or may be placed on probation.

#### 6.3 Unprofessional Conduct

Unprofessional conduct includes any act of fraud, deceit, incompetence, negligence, or dishonesty and shall include, without limitation, the following:

6.3.1 Performing acts beyond the scope of authorized practice by a respiratory care practitioner to include violations of 24 **Del.C.** §1770B or of these regulations.

6.3.2 Assuming duties and responsibilities within the practice of respiratory care without adequate preparation or supervision or when competency has not been maintained.

6.3.3 Performing new respiratory care techniques

and/or procedures without adequate education and practice or without proper supervision.

6.3.4 Failing to take appropriate action or follow policies and procedures in the practice situation designed to safeguard the patient from incompetent, unethical or illegal health care practices.

6.3.5 Inaccurately recording on, falsifying or altering a patient or agency record.

6.3.6 Committing verbal, physical or sexual abuse or harassment of patients or co- employees.

6.3.7 Assigning unqualified persons to perform the practice of licensed respiratory care practitioners.

6.3.8 Delegating respiratory care responsibilities to unqualified persons.

6.3.9 Failing to supervise persons to whom respiratory care responsibilities have been properly delegated.

6.3.10 Leaving a patient assignment in circumstances which endangers the patient except in documented emergency situations.

6.3.11 Failing to safeguard a patient's dignity and right to privacy in providing respiratory care services which shall be provided without regard to race, color, creed or status.

6.3.12 Violating the confidentiality of information concerning a patient except where disclosure is required by law.

6.3.13 Practicing respiratory care when unfit to perform procedures and make decisions when physically, psychologically, or mentally impaired.

6.3.14 Diverting drugs, supplies, or property of a patient or agency or attempting to do so.

6.3.15 Diverting, possessing, obtaining, supplying or administering prescription drugs to any person, including self, except as directed by a person authorized by law to prescribe drugs or attempting to do so.

6.3.16 Providing respiratory care in this state without a currently valid license or permit and without other lawful authority to do so.

6.3.17 Allowing another person to use his/her license or temporary permit to provide respiratory care for any purpose.

6.3.18 Aiding, abetting and/or assisting an individual to violate or circumvent any law or duly promulgated rule or regulation intended to guide the conduct of a respiratory care practitioner or other health care provider.

6.3.19 Resorting to, or aiding in any fraud, misrepresentation or deceit directly or indirectly in connection with acquiring or maintaining a license to practice respiratory care.

6.3.20 Failing to report unprofessional conduct by another respiratory care practitioner licensee or permit holder or as specified in 4.1.8 .



6.3.21 Failing to provide respiratory care to a patient in accordance with the orders of the responsible physician without just cause.

#### 6.4 Disciplinary Investigations And Hearings

6.4.1 Upon receipt of a written complaint against a respiratory care practitioner or upon its own motion, the Council may request the Division of Professional Regulation to investigate the complaint or a charge against a respiratory care practitioner and the process established by 29 **Del.C.** §8807 shall be followed with respect to any such matter.

6.4.2 Where feasible, within sixty (60) days of receiving a complaint from the Attorney General's Office after an investigation pursuant to 29 **Del.C.** §8807(h), the Council shall conduct an evidentiary hearing upon notice to the licensee. Written findings of fact and conclusions of law shall be sent to the Board of Medical Practice along with any recommendation to revoke, to suspend, to refuse to renew a license, to place a licensee on probation, or to otherwise reprimand a licensee found guilty of unprofessional conduct in the licensee's professional activity which is likely to endanger the public health, safety or welfare, or the inability to render respiratory care services with reasonable skill or safety to patients because of mental illness or mental incompetence, physical illness or excessive use of drugs including alcohol.

#### 7.0 Working Student Respiratory Care Practitioner

7.1 A working student respiratory care practitioner may only practice under the direct supervision of a licensed respiratory care practitioner. The scope of practice is limited to those activities for which there is documented evidence of competency.

7.2 Direct supervision means that a licensed respiratory care practitioner will be personally present and immediately available within the treatment area to provide aid, direction, and instruction when procedures are performed. All evaluations, progress notes, and/or chart entries must be co-signed by a licensed respiratory care practitioner.

7.3 A student may apply for a student temporary permit. If approved by the Board, such permit may be issued by the Division of Professional Regulation and may not be renewed. An application will be considered by the Council provided that the applicant meets the following criteria:

7.3.1 Applicant is matriculated in an approved Respiratory Care Program.

7.3.2 Application is submitted no more than 20 weeks prior to the program's announced graduation date.

7.3.3 Applicant shall submit to the Council a certified list of respiratory care services which have been successfully completed as a part of the respiratory care curriculum.

7.4 A student temporary permit shall automatically cease upon graduation or on the date that the holder is no longer matriculated in and not a graduate of a Respiratory

Care Program. Any holder of a temporary student permit which ceases for any of the reasons stated above shall within five (5) working days surrender the permit to the Division of Professional Regulation.

7.5 Subject to Rule 7.4, a student temporary permit shall be valid for 16 weeks.

7.6 Respiratory care services which may be performed by the holder of a student temporary permit are limited to only those services which have been successfully completed by the student as part of a respiratory care program. Successful completion of these services must be certified by the program director on the Verification of Respiratory Care Education Form and submitted to the Council along with an attached competency check list. The holder of the student temporary permit must also meet the employer's standards for those procedures in specified patient care situations.

#### 8.0 Continuing Education

##### 8.1 Contact Hours Required for Renewal

8.1.1 The respiratory care practitioner shall be required to complete (20) twenty contact hours biennially and to retain all certificates and other documented evidence of participation in an approved/accredited continuing education program for a period of at least (3) three years. Upon request, such documentation shall be made available to the Council for random audit and verification purposes. All contact hours must be completed at least sixty (60) days prior to the end of the renewal year.

8.1.2 Contact hours shall be prorated for new licensees in accordance with the following schedule:

Two years remaining in the licensing cycle requires -	20 hours
One year remaining in the licensing cycle requires -	10 hours
Less than one year remaining in the licensing cycle -	exempt

##### 8.2 Exemptions

8.2.1 A licensee who because of a physical or mental illness during the license period could not complete the continuing education requirement may apply through the Council to the Board of Medical Practice for a waiver. A waiver would provide for an extension of time or exemption from some or all of the continuing education requirements for one (1) renewal period. Should the illness extend beyond one (1) renewal period, a new request must be submitted.

8.2.2 A request for a waiver must be submitted sixty (60) days prior to the license renewal date.

##### 8.3 Criteria for Qualification of Continuing Education Program Offerings

The following criteria are given to guide respiratory care practitioners in selecting an appropriate activity/program and to guide the provider in planning and implementing continuing education activities/programs. The overriding consideration in determining whether a

specific activity/program qualifies as acceptable continuing education shall be that it is a planned program of learning which contributes directly to the professional competence of the respiratory care practitioner.

### 8.3.1 Definition of Contact Hours

8.3.1.1 Fifty consecutive minutes of academic course work, correspondence course, or seminar/workshop shall be equivalent to one (1) contact hour. A fraction of a contact hour may be computed by dividing the minutes of an activity by 50 and expressed as a decimal.

8.3.1.2 Recredentialing examination for certified respiratory therapy technician, (CRTT), and registered respiratory therapist, (RRT), shall be equivalent to five (5) contact hours.

8.3.1.3 Successful completion of advanced specialty exams administered by the National Board for Respiratory Care, (NBRC), shall be equal to five (5) contact hours for each exam.

8.3.1.4 One (1) semester hour shall be equal to fifteen (15) contact hours.

8.3.1.5 One (1) quarter hour shall be equal to ten (10) contact hours.

8.3.1.6 Two (2) hours (120 minutes) of clinical educational experience shall be equal to one (1) contact hour.

8.3.1.7 Fifty (50) consecutive minutes of presentation of lectures, seminars or workshops in respiratory care or health care subjects shall be equivalent to one (1) contact hour.

8.3.1.8 Preparing original lectures, seminars, or workshops in respiratory care or health care subjects shall be granted no more than two (2) contact hours for each contact hour of presentation.

8.3.1.9 Performing clinical or laboratory research in health care shall be reviewed and may be granted an appropriate number of contact hour(s) at the Council's discretion.

### 8.3.2 Learner Objectives

8.3.2.1 Objectives shall be written and be the basis for determining content, learning experience, teaching methodologies, and evaluation.

8.3.2.2 Objectives shall be specific, attainable, measurable, and describe expected outcomes for the learner.

### 8.3.3 Subject Matter

Appropriate subject matter for continuing education shall include the following:

8.3.3.1 Respiratory care science and practice and other scientific topics related thereto

8.3.3.2 Respiratory care education

8.3.3.3 Research in respiratory care and health care

8.3.3.4 Management, administration and

supervision in health care delivery

8.3.3.5 Social, economic, political, legal aspects of health care

8.3.3.6 Teaching health care and consumer health education

8.3.3.7 Professional requirements for a formal respiratory care program or a related field beyond those that were completed for the issuance of the original license

### 8.3.4 Description

Subject matter shall be described in outline form and shall include learner objectives, content, time allotment, teaching methods, faculty, and evaluation format.

### 8.3.5 Types of Activities/Programs

8.3.5.1 An academic course shall be an activity that is approved and presented by an accredited post-secondary educational institution which carries academic credit. The course may be within the framework of a curriculum that leads to an academic degree in respiratory care beyond that required for the original license, or relevant to respiratory care, or any course that shall be necessary to a respiratory care practitioner's professional growth and development.

8.3.5.2 A correspondence course contains the following elements:

8.3.5.2.1 developed by a professional group, such as an education corporation or professional association.

8.3.5.2.2 follows a logical sequence.

8.3.5.2.3 involves the learner by requiring active response to module materials and provides feedback.

8.3.5.2.4 contains a test to indicate progress and to verify completion of module.

8.3.5.2.5 supplies a bibliography for continued study.

8.3.5.3 A workshop contains the following elements:

8.3.5.3.1 developed by a knowledgeable individual or group in the subject matter.

8.3.5.3.2 follows a logical sequence.

8.3.5.3.3 involves the learner by requiring active response, demonstration and feedback.

8.3.5.3.4 requires hands-on experience.

8.3.5.3.5 supplies a bibliography for continued study.

8.3.5.4 Advanced and specialty examinations offered by the NBRC or other examinations as approved by the Council including:

Recredential exam.

Pediatric/perinatal specialty exam.

Pulmonary function credentialing exams

Advanced practitioner exam

8.3.5.5 Course preparation

8.3.5.6 Clinical education experience must be:

8.3.5.6.1 Planned and supervised.

8.3.5.6.2 Extended beyond the basic level of preparation of the individual who is licensed.

8.3.5.6.3 Based on a planned program of study.

8.3.5.6.4 Instructed and supervised by individual(s) who possess the appropriate credentials related to the discipline being taught.

8.3.5.6.5 Conducted in a clinical setting.

#### 8.4 Educational Providers

8.4.1 Continuing education contact hours awarded for activities/programs approved by the following are appropriate for fulfilling the continuing education requirements pursuant to these regulations:

American Association for Respiratory Care.

American Medical Association under Physician Category I.

American Thoracic Society

American Association of Cardiovascular and Pulmonary Rehabilitation

American Heart Association

American Nurses Association

American College of Chest Physicians

American Society of Anesthesiologists

American Sleep Disorders Association

Other professional or educational organizations as approved periodically by the Council.

#### 8.5 Accumulation of Continuing Education

8.5.1 When a licensee applies for license renewal, a minimum of twenty (20) contact hours in activities that update skills and knowledge levels in respiratory care theory, practice and science is required. The total of twenty (20) contact hours ~~biennially~~ per renewal period shall include the following categories:

8.5.1.1 A minimum of 12 contact hours of continuing education required for renewal must be acquired in a field related to the science and practice of respiratory care as set forth in Subsection 8.3.3, Subject Matter, 8.3.3.1, 8.3.3.2, or 8.3.3.3.

8.5.1.2 The remaining 8 contact hours of the continuing education required for renewal may be selected from Subsection 8.3.3, Subject Matter.

8.5.2 Contact hours, accumulated through preparation for, presentation of, or participation in activities/programs as defined are limited to application in meeting the required number of contact hours a ~~year~~ per renewal period as follows:

8.5.2.1 Presentation of respiratory care education programs, including preparation time, to a maximum of four contact hours.

8.5.2.2 Presentation of a new respiratory care curriculum, including preparation, to a respiratory care education program, to a maximum of four contact hours.

8.5.2.3 Preparation and publication of respiratory care theory, practice or science, to a maximum of

four contact hours.

8.5.2.4 Research projects in health care, respiratory care theory, practice or science, to a maximum of four contact hours.

8.5.2.5 Infection control programs from facility or agency to a maximum of one contact hour.

~~8.5.2.6 Correspondence courses that are not within the curriculum that leads to an academic degree beyond that required for the original license to a maximum of four contact hours.~~

8.5.2.7 Presentation or participation in review or recertification in American Heart Association or Red Cross provider or instructor programs, such as Advanced Cardiac Life Support, Basic Life Support, Pediatric Advanced Life Support, or CPR, to a maximum of two contact hours per program.

8.5.2.8 Academic course work, related to health care or health care administration, to a maximum of four contact hours.

#### 8.6 Review/Approval of Continuing Education Contact Hours

8.6.1 The Council may review the documentation of any respiratory care practitioner's continuing education.

8.6.2 The Council may determine whether the activity/program documentation submitted meets all criteria for continuing education as specified in these regulations.

8.6.3 Any continuing education not meeting all provisions of these rules shall be rejected in part or in whole by the Council.

8.6.4 Any incomplete or inaccurate documentation of continuing education may be rejected in part or in whole by the Council.

8.6.5 Any continuing education that is rejected must be replaced by acceptable continuing education within a reasonable period of time established by the Council. This continuing education will not be counted towards the next renewal period.

8.6.6 Each license not renewed in accordance with this section shall expire, but may within a period of three years thereafter be reinstated upon payment of all fees as set by the Division of Professional Regulation of the State of Delaware.

8.6.7 An applicant wishing to reinstate an expired license shall provide documentation establishing completion of the required 20 hours of continuing education during the two-year period preceding the application for renewal.

#### 9.0 Renewal of License

9.1 To renew a license to practice respiratory care, a licensee must complete a renewal form provided by the Division of Professional Regulation certifying completion of continuing education.

9.2 Renewal notices will be mailed by the Division of Professional Regulation sixty (60) days prior to the

expiration of the license.

#### 10.0 Application for a License

##### 10.1 Application

10.1.1 An application for a license to practice respiratory care must be completed on a form provided by the Board of Medical Practice and returned to the Board Office with the required, non-refundable fee.

##### 10.2 Completed Application

10.2.1 An application for a license to practice respiratory care shall be considered completed when the Board has received the following documentation:

10.2.1.1 Non-refundable application fee

10.2.1.2 Completed application for licensure

10.2.1.3 Verification of education form

10.2.1.4 Verification of national examination

score

10.2.1.5 Letter(s) of good standing from other states where the applicant may hold a license, if applicable.

10.2.1.6 Any other information requested in the application.

##### 10.3 Appeals Process

10.3.1 When the Council determines that an applicant does not meet the qualifications for licensure as prescribed under 24 **Del.C.** §1770B and the Rules and Regulations governing the practice of respiratory care, the Council shall make such recommendation to the Board proposing to deny the application. The Council shall notify the applicant of its intended action and reasons thereof. The Council shall inform the applicant of an appeals process prescribed under 29 **Del.C.** §10131.

#### 11.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

11.1 If the report is received by the chairperson of the regulatory Board, that chairperson shall immediately notify the Director of Professional Regulation or his/her designate of the report. If the Director of Professional Regulation receives the report, he/she shall immediately notify the chairperson of the regulatory Board, or that chairperson's designate or designates.

11.2 The chairperson of the regulatory Board or that chairperson's designate or designates shall, within 7 days of receipt of the report, contact the individual in question and inform him/her in writing of the report, provide the individual written information describing the Voluntary Treatment Option, and give him/her the opportunity to enter the Voluntary Treatment Option.

11.3 In order for the individual to participate in the Voluntary Treatment Option, he/she shall agree to submit to a voluntary drug and alcohol screening and evaluation at a specified laboratory or health care facility. This initial evaluation and screen shall take place within 30 days following notification to the professional by the participating

Board chairperson or that chairperson's designate(s).

11.4 A regulated professional with chemical dependency or impairment due to addiction to drugs or alcohol may enter into the Voluntary Treatment Option and continue to practice, subject to any limitations on practice the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional, deem necessary, only if such action will not endanger the public health, welfare or safety, and the regulated professional enters into an agreement with the Director of Professional Regulation or his/her designate and the chairperson of the participating Board or that chairperson's designate for a treatment plan and progresses satisfactorily in such treatment program and complies with all terms of that agreement. Treatment programs may be operated by professional Committees and Associations or other similar professional groups with the approval of the Director of Professional Regulation and the chairperson of the participating Board.

11.5 Failure to cooperate fully with the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate in regard to the Voluntary Treatment Option or to comply with their requests for evaluations and screens may disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board chairperson or that chairperson's designate or designates shall cause to be activated an immediate investigation and institution of disciplinary proceedings, if appropriate, as outlined in subsection (h) of this section.

11.6 The Voluntary Treatment Option may require a regulated professional to enter into an agreement which includes, but is not limited to, the following provisions:

11.6.1 Entry of the regulated professional into a treatment program approved by the participating Board. Board approval shall not require that the regulated professional be identified to the Board. Treatment and evaluation functions must be performed by separate agencies to assure an unbiased assessment of the regulated professional's progress.

11.6.2 Consent to the treating professional of the approved treatment program to report on the progress of the regulated professional to the chairperson of the participating Board or to that chairperson's designate or designates or to the Director of the Division of Professional Regulation or his/her designate at such intervals as required by the chairperson of the participating Board or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate, and such person making such report will not be liable when such reports are made in good faith and without malice.

11.6.3 Consent of the regulated professional, in

accordance with applicable law, to the release of any treatment information from anyone within the approved treatment program.

11.6.4 Agreement by the regulated professional to be personally responsible for all costs and charges associated with the Voluntary Treatment Option and treatment program(s). In addition, the Division of Professional Regulation may assess a fee to be paid by the regulated professional to cover administrative costs associated with the Voluntary Treatment Option. The amount of the fee imposed under this subparagraph shall approximate and reasonably reflect the costs necessary to defray the expenses of the participating Board, as well as the proportional expenses incurred by the Division of Professional Regulation in its services on behalf of the Board in addition to the administrative costs associated with the Voluntary Treatment Option.

11.6.5 Agreement by the regulated professional that failure to satisfactorily progress in such treatment program shall be reported to the participating Board's chairperson or his/her designate or designates or to the Director of the Division of Professional Regulation or his/her designate by the treating professional who shall be immune from any liability for such reporting made in good faith and without malice.

11.6.6 Compliance by the regulated professional with any terms or restrictions placed on professional practice as outlined in the agreement under the Voluntary Treatment Option.

11.7 The regulated professional's records of participation in the Voluntary Treatment Option will not reflect disciplinary action and shall not be considered public records open to public inspection. However, the participating Board may consider such records in setting a disciplinary sanction in any future matter in which the regulated professional's chemical dependency or impairment is an issue.

11.8 The participating Board's chairperson, his/her designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional at any time during the Voluntary Treatment Option, restrict the practice of a chemically dependent or impaired professional if such action is deemed necessary to protect the public health, welfare or safety.

11.9 If practice is restricted, the regulated professional may apply for unrestricted licensure upon completion of the program.

11.10 Failure to enter into such agreement or to comply with the terms and make satisfactory progress in the treatment program shall disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board shall be notified and cause to be activated an immediate investigation and disciplinary

proceedings as appropriate.

11.11 Any person who reports pursuant to this section in good faith and without malice shall be immune from any civil, criminal or disciplinary liability arising from such reports, and shall have his/her confidentiality protected if the matter is handled in a nondisciplinary matter.

11.12 Any regulated professional who complies with all of the terms and completes the Voluntary Treatment Option shall have his/her confidentiality protected unless otherwise specified in a participating Board's rules and regulations. In such an instance, the written agreement with the regulated professional shall include the potential for disclosure and specify those to whom such information may be disclosed.

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**DIVISION OF PROFESSIONAL REGULATION**  
**STATE EXAMINING BOARD OF PHYSICAL**  
**THERAPISTS**

Statutory Authority: 24 Delaware Code,  
Section 2604 (24 Del.C. §2604)

PLEASE TAKE NOTICE, pursuant to 29 Del.C. Chapter 101 and 24 Del.C. Section 2604(1), the Delaware State Examining Board of Physical Therapists proposes to revise its rules and regulations. The proposed changes are a comprehensive revision of the old rules and regulations and to serve to implement or clarify specific sections of 24 Del.C. Chapter 26.

A public hearing will be held on the proposed Rules and Regulations on Tuesday, August 15, 2000 at 6:00 p.m. in the Second Floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, 19904. The Board will receive and consider input in writing from any person on the proposed Rules and Regulations. Any written comments should be submitted to the Board in care of Susan Miccio at the above address. The final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed Rules and Regulations or to make comments at the public hearing should notify Susan Miccio at the above address or by calling (302) 739-4522.

This notice will be published in two newspapers of general circulation not less than twenty (20) days prior to the date of the hearing.

- ~~1.0 Scope and Objectives~~
- ~~2.0 Definitions~~
- ~~3.0 Board~~
- ~~4.0 Physical Therapists~~
- ~~5.0 Physical Therapist Assistants~~
- ~~6.0 Athletic Trainers~~
- ~~7.0 Physical Therapy Aides~~
- ~~8.0 Admission to Practice: License by Examination~~

9.0—Continuing Education Units  
 10.0—Admission to Practice: License by Reciprocity  
 11.0—Temporary Licensure  
 12.0—Foreign Trained Applicant for Licensure  
 13.0—Reactivation of Licensure  
 14.0—Disciplinary Action  
 15.0—Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

## 1.0 Scope and Objectives

Under 24 ~~Del.C.~~ Ch. 26 (The Practice Act), a State Examining Board of Physical Therapists is created to meet the following objectives:

- 1.1 to protect the general public,
- 1.2 to maintain minimum standards of practitioner competency, and
- 1.3 to maintain certain standards in the delivery of service to the public.

The Board regulates the practice of Physical Therapists (PTs), Physical Therapist Assistants (PTAs) and Athletic Trainers (ATs) in the State of Delaware.

## 2.0 Definitions

2.1 The definition of "Physical Therapy" by Delaware Law is provided by the Practice Act, 24 ~~Del.C.~~ §2602(1). Physical Therapy includes the performance and interpretation of tests and measurements of bodily function as an aid in the examination, evaluation or treatment of any human conditions. Physical therapy does not include the practice of Athletic Training as defined in 24 ~~Del.C.~~ §2602.

2.2 Physical Therapist or PT means a person who is licensed under 24 ~~Del.C.~~ Ch. 26 to practice Physical Therapy.

### 2.3 Consultation

2.3.1 Consultation in direct access. A physician must be consulted if a patient is still receiving physical therapy after 30 calendar days have lapsed from the date of the initial assessment. This consultation must be documented and could take place at any time during the initial thirty day period. The consultation can be made by telephone, fax, in writing, or in person. There is nothing in these rules and regulations or in the Physical Therapy Law that limits the number of consultations the physical therapist can make on the patient's behalf. The consult should be with the patient's personal physician. If the patient does not have a personal physician, the physical therapist is to offer the patient at least three physicians from which to choose. The referral to a physician after the initial thirty day period must not be in conflict with 24 ~~Del.C.~~ §2616(a)(8) of this chapter which deals with referral for profit. If no physician consult has been made in this initial thirty day period then treatment must be terminated. A patient is not to receive physical therapy from the same practitioner, for the original complaint, during the 6 months following discharge unless

he or she has a physician referral.

2.3.2 Consultation with written prescription from a physician, dentist, podiatrist, or chiropractor. A prescription accompanying a patient must not be substantially modified without documented consultation with the referring practitioner. The consultation can be made by telephone, fax, in writing, or in person.

2.4 Direct supervision in connection with a PT practicing under a temporary license means:

2.4.1 a licensed PT supervisor shall be on the premises when the individual with a temporary license is practicing and

2.4.2 evaluations and progress notes written by the individual with a temporary license shall be co-signed by the licensed PT supervisor.

2.5 Physical Therapist Assistant or PTA means a person who is licensed under 24 ~~Del.C.~~ Ch. 26 to assist licensed Physical Therapists.

### 2.6 Supervision

2.6.1 Direct supervision in relation to a PTA with less than one (1) year experience means a PT shall be on the premises at all times and see each patient.

2.6.2 Direct supervision in relation to a PTA with one (1) year or more experience means that a PTA must receive on-site, face to face supervision at least once every fifth treatment day or once every three weeks, whichever occurs first. The supervising PT must have at least one (1) year clinical experience. The PT must be available and accessible by telecommunications to the PTA during all working hours of the PTA.

2.6.3 The PT is responsible for the actions of the PTA when under his/her supervision. All supervision must be documented.

See 1 DE Reg. 714 (12/1/97)

2.7 The definition of "Athletic Training" by Delaware Law is provided by the Practice Act, 24 ~~Del.C.~~ §2602(4). Athletic Training means and includes:

2.7.1 prevention of athletic injuries,

2.7.2 recognition and evaluation of athletic injuries,

2.7.3 management, treatment, and disposition of athletic injuries,

2.7.4 rehabilitation of athletic injuries,

2.7.5 organization and administration of athletic training programs, and

2.7.6 education and counseling of athletes regarding a program(s) of athletic training.

2.7.7 Athletic Training shall also include prevention, conditioning, and reconditioning of non-athletic injuries as defined by law and in regulation by the Board.

2.8 Athletic Trainer or AT means a person who is licensed under Ch. 26 and is defined by the Practice Act 24 ~~Del.C.~~ §2602(5).

2.9 Direct supervision in connection with an AT means

a PT shall be on the premises at all times in a clinical setting and see every patient.

2.10 ~~On site or on premises, in connection with supervision of a PTA or AT, means that the PTA or AT must be in the same physical building as the supervising PT. On site or on premises does not refer to attached buildings.~~

See 1 DE Reg. 714 (12/1/97)

2.11 ~~Physical Therapy Aide or aide or technician means a person who performs certain routine, designated physical therapy tasks under the direct supervision of a licensed physical therapist or physical therapist assistant. There shall be documented evidence of sufficient inservice training to assure safe performance of the duties assigned to the aide.~~

2.12 ~~Direct supervision in connection with an aide means a licensed physical therapist or physical therapist assistant shall be personally present and immediately available within the treatment area to give aid, direction, and instruction when procedures are performed.~~

2.13 ~~Unprofessional Conduct. A Physical Therapist, PTA, or AT whose behavior fails to conform to legal standards and accepted standards of their profession, and who thus may adversely affect the health and welfare of the public, may be found guilty of unprofessional conduct. Such unprofessional conduct shall include, but not be limited to, the following:~~

2.13.1 ~~Assuming duties within the practice of physical therapy or athletic training without adequate preparation or supervision or when competency has not been maintained.~~

2.13.2 ~~The PT who knowingly allows a PTA to perform prohibited activities may be guilty of unprofessional conduct.~~

2.13.3 ~~The PTA who knowingly performs prohibited activities may be guilty of unprofessional conduct.~~

See 1 DE Reg. 714 (12/1/97)

2.13.4 ~~Performing new physical therapy or athletic training techniques or procedures without proper education and practice or without proper supervision.~~

2.13.5 ~~Failing to take appropriate action or to follow policies and procedures in the practice situation designed to safeguard the patient.~~

2.13.6 ~~Inaccurate recording, falsifying, or altering a patient or facility record.~~

2.13.7 ~~Committing any act of verbal, physical, mental or sexual abuse of patients.~~

2.13.8 ~~Assigning untrained persons to perform functions which are detrimental to patient safety, for which they are not adequately trained or supervised, or which are not authorized under these rules and regulations.~~

2.13.9 ~~Failing to supervise individuals to whom physical therapy tasks have been delegated.~~

2.13.10 ~~Failing to safeguard the patient's dignity~~

and right to privacy in providing services regardless of race, color, creed and status.

2.13.11 ~~Violating the confidentiality of information concerning the patient.~~

2.13.12 ~~Failing to take appropriate action in safeguarding the patient from incompetent health care practice.~~

2.13.13 ~~Practicing physical therapy as a PT or PTA or athletic training as a trainer when unfit to perform procedures or unable to make decisions because of physical, psychological, or mental impairment.~~

2.13.14 ~~Practicing as a PT, PTA or AT when physical or mental ability to practice is impaired by alcohol or drugs.~~

2.13.15 ~~Diverting drugs, supplies or property of a patient or a facility.~~

2.13.16 ~~Practicing physical therapy or athletic training as a PT or AT and/or practicing under the supervision of a PT as a PTA or AT when a license has expired.~~

2.13.17 ~~Allowing another person to use his license.~~

2.13.18 ~~Resorting to fraud, misrepresentation, or deceit in taking the licensing examination or obtaining a license as a PT, PTA or AT.~~

2.13.19 ~~Impersonating any applicant or acting as proxy for the applicant in a PT, PTA, or AT licensing examination.~~

2.13.20 ~~Continues to treat a patient, who initiated treatment without a formal referral, for longer than thirty days without a physician consult.~~

2.13.21 ~~Modifies a treatment prescription without consulting referring physician.~~

2.13.22 ~~Failing to comply with the mandatory continuing education requirements of 24 Del.C. §2606(a)(4) and section 9.0 of these rules and regulations.~~

2.14 ~~Examination means the approved examination (see section 8.3).~~

### 3.0 The State Examining Board of Physical Therapists

3.1 ~~The Board shall consist of nine members who shall be residents of Delaware and who shall be appointed by the Governor. A list of professional nominees shall be submitted to the Governor by the President of the Delaware Chapter of the American Physical Therapy Association (APTA). Each of the four PT Board members shall be a licensed PT, have a least three years experience immediately preceding his appointment, and be actively engaged in Physical Therapy during his/her incumbency. Three members shall be consumers, one shall be a registered PTA and one shall be a registered AT.~~

3.2 ~~The Board shall be composed of a Chairperson, Vice-Chairperson, Secretary, and six members. Elections shall be held annually.~~

3.3 ~~Each member of the Board shall receive~~

compensation for each day actually engaged in the discharge of his duties. The compensation shall be a reasonable amount based on the time spent on work pertaining to the affairs of the Board in accordance with the limitations imposed by the State.

3.4 The Board shall have the authority to review, revise, adopt and administer the rules and regulations in accordance with the Administrative Procedures Act, and shall have the authority to perform the following:

3.4.1 Approval of qualified applicants for examination and for reciprocity.

3.4.2 Issuance of licenses and registrations through the Division of Professional Regulation to Applicants who are qualified under these rules and regulations.

3.4.3 Refer to the Division of Professional Regulation and assist in the investigation of individuals who are charged with violation of legal, moral, or ethical propriety. The Board may refuse to grant or may revoke a PT, PTA or AT license if the PT, PTA or AT:

3.4.3.1 has been found to misuse drugs or alcohol;

3.4.3.2 has been convicted of a state or federal law related to the use, sale or possession of drugs;

3.4.3.3 has obtained or attempted to obtain a license by fraud or material misrepresentation;

3.4.3.4 is guilty of any act derogatory to the standing and ethics of the profession of Physical Therapy or athletic training;

3.4.3.5 is unable to practice as a competent PTA, AT or Physical Therapist because of a physical or mental condition;

3.4.3.6 is guilty of unprofessional conduct;

3.4.3.7 otherwise violates 24 ~~Del.C.~~ Ch. 26.

3.5 The Administrative Assistant provided to the Board by the Division of Professional Regulation shall maintain the meeting records and a register of current valid licenses which shall be available for public examination. The Administrative Assistant shall also keep other records pertinent to the operation of the Board.

3.6 Communication with the Delaware Chapter of the APTA. The Chairperson shall represent the Board at the Chapter's official meeting. The AT member shall represent the Board at NATA's official meeting.

3.7 Performance of all other necessary acts consistent with the Law to administer these rules and regulations and enforce 24 ~~Del.C.~~ Ch. 26.

3.8 Specific duties of the officers:

3.8.1 The Chairperson:

3.8.1.1 Shall call meetings of the Board at least twice a year. A majority of the Board shall have the authority to call a meeting.

3.8.1.2 Shall arrange for the location of the examination and appoint a proctor with the approval of the Division of Professional Regulation.

3.8.1.3 Shall represent the Board in all official functions and act as Board spokesperson.

3.8.2 The Vice-Chairperson:

3.8.2.1 Shall substitute for the Chairperson during the officer's absence.

3.8.2.2 Shall maintain a file on amendments to the regulations.

3.8.2.3 Shall receive information (in conjunction with the Administrative Assistant).

3.8.3 The Secretary:

3.8.3.1 Shall perform clerical duties of processing applications, requesting required information for reciprocity and administering the examinations.

3.8.3.2 Shall maintain a liaison with the Division of Professional Regulation, which provides services of printing, mailing and record keeping.

3.8.3.3 Shall receive information from the applicant for granting a license for the applicant.

3.8.3.4 Shall compile the Board's decisions and take action on the decisions as the Board requests.

3.8.3.5 Shall be responsible together with the Division of Professional Regulation for the preparation, communication, and distribution of official forms used in the operations of the Board.

3.8.3.6 Shall arrange reviews of foreign-trained applicants.

## 4.0 Physical Therapists

The Physical Therapy license issued to qualified professionals does permit them to treat any person.

## 5.0 Physical Therapist Assistants

The PTA may treat patients only under the direction of a PT as defined in Section 2.2. The PTA may perform physical therapy procedures and related tasks that have been selected and delegated by the supervising PT. The PTA may administer treatment with therapeutic exercise, massage, mechanical devices, and therapeutic agents that use the properties of air, water, electricity, sound or light. The PTA may make minor modifications to treatment plans within the predetermined plan of care, assist the PT with evaluations, and document treatment progress. The ability of the PTA to perform the selected and delegated tasks shall be assessed by the supervising PT. The PTA shall not perform interpretation of referrals, physical therapy evaluation and reevaluation, major modification of the treatment plan, final discharge of the patient, or therapeutic techniques beyond the skill and knowledge of the PTA or without proper supervision.

See 1 DE Reg. 714 (12/1/97)

## 6.0 Athletic Trainers

6.1 The athletic trainer functioning in the non-clinical setting may evaluate, treat, and provide appropriate first aid



to injuries incurred by the athlete during participation in or training for scholastic, professional, or sanctioned amateur athletic activities. All treatments for injuries to athletes require a physician's referral, except for minor sprains, strains, and contusions, first aid excluded. Evaluation and/or treatment by the athletic trainer to supportive staff, spectators, and other persons other than the athlete shall be limited to first aid. An athletic trainer functioning in a clinical setting may use therapeutic exercises and modalities such as heat, cold, light, air, massage, water, sound, and electricity, for the treatment of musculoskeletal injuries. The athletic trainer may also provide first aid in the clinical setting. All treatment by the athletic trainer in a clinical setting must be performed while under the direct, on-site supervision of a physical therapist. The AT may make minor modifications to treatment plans within the predetermined plan of care, assist the PT with evaluations, and document treatment progress. The ability of the AT to perform the selected and delegated tasks shall be assessed by the supervising AT. The athletic trainer in a clinical setting may not independently initiate, modify, or discharge a patient's program.

6.2 The PT who knowingly allows an AT to perform prohibited activities may be guilty of unprofessional conduct.

6.3 At no time may a PT supervise more than 2 PTAs, 2 ATs or 1 PTA and 1 AT. A PT may only supervise 1 PTA off site. ATs must be supervised on site.

#### 7.0 PT Aides

7.1 Treatments which may be performed by aides under direct supervision are:

- 7.1.1 gait practice and ambulation
- 7.1.2 functional activities
- 7.1.3 transfers
- 7.1.4 routine follow up of specific exercises
- 7.1.5 hot or cold packs
- 7.1.6 whirlpool/Hubbard tank
- 7.1.7 contrast bath
- 7.1.8 infrared
- 7.1.9 paraffin bath
- 7.1.10 developmental stimulation
- 7.1.11 ultra sound

7.2 Exceptions—An aide may perform:

7.2.1 non-treatment related activities, such as secretarial, clerical, and housekeeping duties without direct supervision;

7.2.2 patient related activities that do not involve treatment, including transporting patients, undressing and dressing patients, and applying assistive and supportive devices without direct supervision, and

7.2.3 set up and preparation of patients requiring treatment using PT modalities.

7.3 Prohibited Activities—An aide may not perform:

7.3.1 evaluation, or

7.3.2 treatments other than those listed in Section

7.1.

7.4 The PT or PTA who knowingly allows a PT aide to perform prohibited activities may be guilty of unprofessional conduct.

7.5 An aide who violates these regulations shall be considered by the Board to be practicing in violation of the Practice Act.

#### 8.0 Admission to Practice: License by Examination

8.1 Applications, copies of the rules and regulations, and copies of the Practice Act are available from the Division of Professional Regulation.

8.2 Applicants for PT or PTA licensure shall not be admitted to the examination without the submission of the following documents four weeks prior to the examination date:

8.2.1 Professional Qualifications—proof of graduation (official transcript) from an educational program for the PT or PTA which is accredited by the appropriate accrediting agency as set forth in the Practice Act. If the applicant graduated from a school prior to 1936, the school shall have been approved by the APTA at the time of graduation.

8.2.2 A fee in check or money order payable to the State of Delaware.

8.2.3 A completed application form.

8.3 Any United States citizen taking the PT or PTA exam must show legal proof of identity, such as a driver's license or passport. The proof of identity must have a picture and signature. The Board may use the PT and PTA examination endorsed by the APTA, the Federation of State Boards of Physical Therapy or National Athletic Trainers Association. AT candidates must pass the Certification Examination endorsed by National Athletic Trainers' Association (NATA). Uniform national test dates will be used if available.

See 1 DE Reg. 714 (12/1/97)

8.4 All applicants for licensure as a PT or PTA must successfully pass the examination described in Section 8.3 in order to become eligible for licensure. The Board will adopt the criterion-referenced passing point recommended by the Federation of State Boards of Physical Therapy. The passing point shall be set to equal a scaled score of 600 based on a scale ranging from 200 to 800. All sections of the examination shall be passed. In case of failure, the applicant may take a second examination after submitting the applicable fee. Only sections failed must be repeated. The second examination shall be taken after six months and within two years from the date of the first examination. If the applicant fails any subsequent examination, the applicant must show satisfactory proof to the Board that he/she has taken Board approved corrective action (e.g. refresher

course) before being allowed to take the examination again.

See 1 DE Reg. 714 (12/1/97)

8.5 Applicants for licensure as an AT must submit to the Board the following:

8.5.1 Professional Qualifications — proof of graduation (official transcript) from an educational program accredited by the appropriate accrediting agency.

8.5.2 A passing grade on the Professional Certification Examination as determined by the National Athletic Trainers Association (NATA).

8.5.3 All sections of the examination shall be passed.

8.5.4 A check or money order made payable to the State of Delaware, as noted on the application form.

8.5.5 The completed application form.

8.6 Licenses shall expire biennially on every odd numbered year. The following items shall be submitted upon application for renewal:

8.6.1 completed renewal application form

8.6.2 applicable fee, and

8.6.3 for individuals seeking relicensure, evidence of continuing education courses as provided by Section 9.

#### 9.0 Mandatory Continuing Education Units (CEU's)

9.1 Three CEU's are required for every biennial license renewal for Physical Therapists, Physical Therapist Assistants, and Athletic Trainers. The Continuing Education Unit Activity Record (CEUAR) credits shall be received at the Division of Professional Regulation, Dover, Delaware, no later than November 1st every even numbered year and shall be received every 2 years after such date.

See 1 DE Reg. 714 (12/1/97)

9.2 Individuals shall maintain the following items in order to receive credit for CEU's:

9.2.1 name of applicant seeking renewal

9.2.2 license classification (PT, PTA, AT)

9.2.3 license number of applicant

9.2.4 proof of attendance at CEU course

9.2.5 date of CEU course

9.2.6 instructor(s) of CEU course

9.2.7 sponsor of CEU course

9.2.8 title of CEU course

9.2.9 number of hours of CEU course

See 1 DE Reg. 714 (12/1/97)

9.3 Continuing Education Regulations, 24 Del.C. §2607. Licenses shall expire biennially on January 1st and may be renewed upon submission of a renewal application provided by the Board and payment of a renewal fee along with evidence of continuing education courses as may be required by the rules and regulations set forth by the Board. Each licensed Physical Therapist, Physical Therapist Assistant and Athletic Trainer is responsible for continuing his/her education so that professional skills are maintained in accordance with the advancement of the profession. The

purpose of this is to help Physical Therapists, Physical Therapist Assistants and Athletic Trainers become more efficient in achieving their objectives.

See 1 DE Reg. 714 (12/1/97)

9.3.1 For a licensee to renew a license, documentation of three continuing education units over the two year period immediately preceding application are required for renewal. CEU requirements shall be prorated for new licensees if application is made by examination only. If the license is granted during the six month period shown below, the following will be required for renewal:

Odd Numbered Year Even Numbered Year

1/1 - 6/30 2.5 CEUs 1/1 - 6/30 1.5 CEUs

7/1 - 12/31 2.0 CEUs 7/1 - 12/31 .5 CEUs

Applicants who are issued licenses via endorsements will be required to complete the full requirements for continuing education units prior to the next renewal time.

9.3.2 One CEU will be given for every 10 hours of an approved continuing education course. (1 contact hour = .1 CEU). Each course must include topics relevant to the field of health care as it pertains to Physical Therapy or Athletic Training. Approval of CEU's shall be within the discretion of the State Examining Board of Physical Therapists. Continuing education units that have been previously approved during the current licensing period by another agency such as a national governing body or a fellow state licensing board shall be acceptable to the Examining Board for the State of Delaware as appropriate CEU's. Any sponsors or licensees wishing to receive prior written approval of CEU courses from the Examining Board must complete a CEU Application Form. CEU requirements may not be carried over from one biennial period to the next one.

9.3.3 At the time of license renewal, the appropriate forms will be supplied by the Board. Proof of attendance shall be enclosed by the licensee when requested by the Board. While course brochures may be used to verify contact hours, they are not considered to be acceptable proof for use of verification of course attendance. The CEUAR must be received by the Board no later than 60 days prior to license expiration. All licensees must complete and submit to the Board the CEUAR. If randomly selected, the licensee must submit documentation of the CEU's. All questionable CEUAR's will be re-evaluated.

9.3.4 In the event a licensee shall fail to complete the required credits at the end of the applicable period, the Board may withhold issuance of a permanent license unless the CEUAR required by Section 9.3.3 is accompanied by a specific plan for making up the deficiency of necessary credits within 120 days after the date the CEUAR is signed by the licensee. The plan shall be deemed accepted by the Board unless within 60 days after the receipt of the CEUAR the Board notifies the licensee to the contrary. Full

completion of the licensee's plan shall be reported by CEUAR not later than 15 days following the end of the 120 day period. Failure to complete the specific plan within the 120 day period may result in the Board suspending the license issued, following a hearing pursuant to the Administrative Procedures Act, for unprofessional conduct as defined by Section 2.13.22.

9.3.5 The Board has the power to waive any part of the entire CEU requirement. Exemptions to the CEU requirement may be granted due to prolonged illness or other incapacity. Application for exemption shall be made in writing to the Board by the applicant for renewal and must be received by the Board no later than November 1st of the end of the respective CEU term.

9.3.6 CEU's may be earned through Board approved courses in colleges and universities, extension courses, independent study courses, workshops, seminars, conferences, lectures, videotapes, professional presentations and publications, and inservices oriented toward the enhancement of their respective professional's practice. CEU programs shall be conducted under responsible sponsorship, capable direction and qualified instruction. The program may include staff development activities of agencies and cross-disciplinary offerings.

9.3.7 Examples of acceptable continuing education which may be approved by the Board fall under the following categories:

9.3.7.1 professional meetings\*. To include: national, state, chapter (not to exceed 2.0 CEU's)

9.3.7.2 seminars/workshops\* (not to exceed 2.5 CEU's)

9.3.7.3 university/college courses

1.0 CEU for semester

0.8 CEU for trimester

0.7 CEU for quarter

9.3.7.4 staff/faculty inservices\* (not to exceed .5 CEU's)

9.3.7.5 passing of licensing examination (1.5 CEU's)

9.3.7.6 first time presentation of professionally oriented course/lecture\* (0.3 CEU/hour, not to exceed .6 CEU's per presentation, not to exceed 1.2 total)

9.3.7.7 original publication in peer reviewed publication (.3 CEU's)

9.3.7.8 original publication in non-peer reviewed publication (.1 CEU's)

9.3.7.9 approved self studies\* (not to exceed 1.0 CEU) including:

- videotapes, if:
- there is a sponsoring agency
- there is a facilitator or program official present
- the program official is not the only attendee

- correspondence course, if a sponsoring agency provides a certificate of completion

9.3.7.10 holding of an office, to include:

- executive officer's position for the national or state professional associations (President Vice President, Secretary, Treasurer)

- member, Examining Board of Physical Therapy (.3 CEU's)

9.3.7.11 acting as the direct clinical instructor providing supervision to a PT, PTA or AT student officially enrolled in an accredited institution during an internship (40 contact hours = .1 CEU, not to exceed .5 CEU's)

\* The Board will determine the appropriate number of contact hours.

See 1 DE Reg. 714 (12/1/97)

10.0 Admission to Practice, Licensure/Registration by Reciprocity:

Definition—The granting of a license or registration to an applicant who meets all the requirements set forth in this section and who holds a valid current license/registration in another state, territory, or the District of Columbia.

10.1 The reciprocity applicant shall submit the documentation listed in sections 8.2 or 8.5.

10.2 The reciprocity applicant shall submit proof that he/she is currently licensed or registered as a PT, PTA or AT by a regulatory body of another state, territory or the District of Columbia, including a copy of his valid current license/registration issued by such regulatory body; and that the standards for licensure or registration by such regulatory body were substantially equivalent to the standards for licensure in Delaware at the time of the applicant's licensure. An applicant shall be deemed to have satisfied this Section upon evidence satisfactory to the Board that he has complied with the standards set forth below:

10.2.1 The PT or PTA applicant has passed the examination in the state, territory, or the District of Columbia in which he/she was initially licensed/registered. The passing score shall be 1.5 standard deviation below the national norm for those PTs and PTAs having taken the examination prior to 1990. For the AT candidate, the passing score shall be that which was established at time of examination. All sections of the examination shall be passed. The reciprocity applicant shall supply his/her examination scores to the Board. The applicant may obtain his/her scores from the regulatory body of the state, territory, or the District of Columbia in which he/she was currently licensed/registered or from the Interstate Reporting Service (IRS). From PT applicants who were licensed/registered by a state, territory, or the District of Columbia only prior to 1963, the Board shall accept the following:

10.2.1.1 Professional Examination Service—American Physical Therapy Association (PES/APTA) examination scores with a passing grade of 1.5 standard

deviation below the national norm on all sections, or

10.2.1.2 other examining mechanisms which in the judgment of the Board were substantially equal to the mechanisms of the State of Delaware at the time of examination.

10.3 The AT seeking reciprocity shall meet all criteria in section 8.5.

#### 11.0 Temporary Licensure (four situations)

11.1 PT and PTA applicants waiting to take the examination. The Board may issue a temporary license to applicants who have submitted to the Board the documents listed in section 8.2 and section 8.5 respectively who have been determined by the Board to be eligible to take the examination. The Board shall accept a letter signed by the applicant's school official stating that the applicant has completed all requirements for graduation; provided, however, that the applicant shall submit to the Board an official transcript as soon as it becomes available. Such applicants may practice only under the direct supervision of a licensed Physical Therapist. The license shall remain effective for two months after the examination date. It shall automatically expire upon notice to the applicant of his/her failure to pass the license examination. After the applicable fee and written application have been submitted, the Board may renew the temporary license if the applicant is eligible to retake the examination. The temporary license of an applicant who has passed the examination may be extended at the discretion of the Board chair or other officer, upon a showing of extenuating circumstances pending the next scheduled Board meeting.

11.2 Applicants requesting reciprocity as a PT, PTA, and AT. The Board may issue a temporary license to an applicant upon the applicant's compliance with all requirements listed in sections 8.2 and 8.5, provided that submission of the applicant's examination scores shall not be required. The temporary license shall not be renewable. The temporary licensee may practice only under the direct supervision of an applicable licensed professional.

11.3 Applicants engaged in a Special Project. The Board may issue a temporary license to applicants practicing in the State on a temporary basis in order to:

11.3.1 assist in a medical emergency, or

11.3.2 engage in a special project or teaching assignment, provided that the applicant complies with the requirements of sections 8.2 or 8.5. The temporary license may remain in effect for a maximum of one year from the date of issuance. It may be renewed once.

11.3.3 An AT certified by NATA, or licensed by the State where the professional is employed may practice athletic training in Delaware, if he/she is in Delaware with a visiting team, or an athlete, and only in a non-clinical setting.

11.4 Applicants who have failed to complete the CEU requirements. The Board may issue a provisional license to

a PT, PTA or AT who has failed to complete his CEU requirement in a timely fashion for good cause but is otherwise eligible for relicensure. The provisional license is not renewable.

#### 12.0 Foreign Trained Applicant for Licensure

12.1 Applicants for licensure who are graduates of a PT, PTA school or AT program located in a foreign country shall complete all of the following requirements before being admitted to the examination.

12.1.1 The applicant shall submit proof satisfactory to the Board of graduation from an education program appropriate to their profession in a foreign country. Each foreign applicant must demonstrate that they have met the minimum education requirements as presented by the Federation of State Boards. See addendum. The applicant shall arrange and pay for a credential evaluation of such foreign school's program to be completed by one of three independent agencies:

International Educational Research Foundation, Inc.  
P.O. Box 66940  
Los Angeles, CA 90066

International Consultants of Delaware, Inc.  
109 Barksdale Professional Center  
Newark, DE 19711

Educational Credential Evaluators, Inc.  
P.O. Box 92970  
Milwaukee, WI 53202-0970  
See 1 DE Reg. 714 (12/1/97)

12.1.2 The applicant shall complete the requirements of sections 8.2 or 8.5.

12.1.3 The applicant shall pass the examination described in sections 8.3 and 8.4.

#### 13.0 The Board Shall Keep an Inactive Register.

13.1 Any person who has been registered in the State and is neither residing within the State nor actively engaged in the practice of physical therapy in the State may at their request be placed on the inactive register. The Board may reactivate an inactive license upon receipt of the following:

13.1.1 a written request for reactivation;

13.1.2 the applicant for licensure as a PT, PTA or AT that has been actively engaged in the practice for the past five years. The applicant for registration as a PTA has been actively engaged in the assistance of a licensed PT for the past five years. If the applicant for licensure/registration has not met this condition, the following requirements shall be completed:

13.1.2.1 he/she shall work under the direct supervision of a PT/AT in Delaware for a minimum of six

months. The supervising PT/AT shall certify to the completion of the six month applicant's clinical competence on forms supplied by the Board;

13.1.3 applicable renewal fee;

13.1.4 notice of intent to resume practice of Physical Therapy in Delaware, and

13.1.5 proof of completion of 1.5 CEUs during the previous 12 months.

~~14.0 Disciplinary Action Shall Be Taken According to 29 Del.C. Ch. 88~~

~~15.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals~~

~~15.1 If the report is received by the chairperson of the regulatory Board, that chairperson shall immediately notify the Director of Professional Regulation or his/her designate of the report. If the Director of Professional Regulation receives the report, he/she shall immediately notify the chairperson of the regulatory Board, or that chairperson's designate or designates. 15.2 The chairperson of the regulatory Board or that chairperson's designate or designates shall, within 7 days of receipt of the report, contact the individual in question and inform him/her in writing of the report, provide the individual written information describing the Voluntary Treatment Option, and give him/her the opportunity to enter the Voluntary Treatment Option.~~

~~15.3 In order for the individual to participate in the Voluntary Treatment Option, he/she shall agree to submit to a voluntary drug and alcohol screening and evaluation at a specified laboratory or health care facility. This initial evaluation and screen shall take place within 30 days following notification to the professional by the participating Board chairperson or that chairperson's designate(s).~~

~~15.4 A regulated professional with chemical dependency or impairment due to addiction to drugs or alcohol may enter into the Voluntary Treatment Option and continue to practice, subject to any limitations on practice the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional, deem necessary, only if such action will not endanger the public health, welfare or safety, and the regulated professional enters into an agreement with the Director of Professional Regulation or his/her designate and the chairperson of the participating Board or that chairperson's designate for a treatment plan and progresses satisfactorily in such treatment program and complies with all terms of that agreement. Treatment programs may be operated by professional Committees and Associations or other similar professional groups with the approval of the Director of Professional Regulation and the chairperson of the participating Board.~~

~~15.5 Failure to cooperate fully with the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate in regard to the Voluntary Treatment Option or to comply with their requests for evaluations and screens may disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board chairperson or that chairperson's designate or designates shall cause to be activated an immediate investigation and institution of disciplinary proceedings, if appropriate, as outlined in subsection (h) of this section.~~

~~15.6 The Voluntary Treatment Option may require a regulated professional to enter into an agreement which includes, but is not limited to, the following provisions:~~

~~15.6.1 Entry of the regulated professional into a treatment program approved by the participating Board. Board approval shall not require that the regulated professional be identified to the Board. Treatment and evaluation functions must be performed by separate agencies to assure an unbiased assessment of the regulated professional's progress.~~

~~15.6.2 Consent to the treating professional of the approved treatment program to report on the progress of the regulated professional to the chairperson of the participating Board or to that chairperson's designate or designates or to the Director of the Division of Professional Regulation or his/her designate at such intervals as required by the chairperson of the participating Board or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate, and such person making such report will not be liable when such reports are made in good faith and without malice.~~

~~15.6.3 Consent of the regulated professional, in accordance with applicable law, to the release of any treatment information from anyone within the approved treatment program.~~

~~15.6.4 Agreement by the regulated professional to be personally responsible for all costs and charges associated with the Voluntary Treatment Option and treatment program(s). In addition, the Division of Professional Regulation may assess a fee to be paid by the regulated professional to cover administrative costs associated with the Voluntary Treatment Option. The amount of the fee imposed under this subparagraph shall approximate and reasonably reflect the costs necessary to defray the expenses of the participating Board, as well as the proportional expenses incurred by the Division of Professional Regulation in its services on behalf of the Board in addition to the administrative costs associated with the Voluntary Treatment Option.~~

~~15.6.5 Agreement by the regulated professional that failure to satisfactorily progress in such treatment program shall be reported to the participating Board's~~

chairperson or his/her designate or designates or to the Director of the Division of Professional Regulation or his/her designate by the treating professional who shall be immune from any liability for such reporting made in good faith and without malice.

15.6.6 Compliance by the regulated professional with any terms or restrictions placed on professional practice as outlined in the agreement under the Voluntary Treatment Option.

15.7 The regulated professional's records of participation in the Voluntary Treatment Option will not reflect disciplinary action and shall not be considered public records open to public inspection. However, the participating Board may consider such records in setting a disciplinary sanction in any future matter in which the regulated professional's chemical dependency or impairment is an issue.

15.8 The participating Board's chairperson, his/her designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional at any time during the Voluntary Treatment Option, restrict the practice of a chemically dependent or impaired professional if such action is deemed necessary to protect the public health, welfare or safety.

15.9 If practice is restricted, the regulated professional may apply for unrestricted licensure upon completion of the program.

15.10 Failure to enter into such agreement or to comply with the terms and make satisfactory progress in the treatment program shall disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board shall be notified and cause to be activated an immediate investigation and disciplinary proceedings as appropriate.

15.11 Any person who reports pursuant to this section in good faith and without malice shall be immune from any civil, criminal or disciplinary liability arising from such reports, and shall have his/her confidentiality protected if the matter is handled in a nondisciplinary matter.

15.12 Any regulated professional who complies with all of the terms and completes the Voluntary Treatment Option shall have his/her confidentiality protected unless otherwise specified in a participating Board's rules and regulations. In such an instance, the written agreement with the regulated professional shall include the potential for disclosure and specify those to whom such information may be disclosed.

## 1.0 Definitions

### 2.0 Board

### 3.0 Physical Therapist Assistants

### 4.0 Athletic Trainers

### 5.0 Support Personnel

### 6.0 Qualifications of Applicant

## 7.0 Mandatory Continuing Education Units

## 8.0 Admission to Practice: License by Reciprocity

## 9.0 Temporary Licensure

## 10.0 Foreign Trained Applicant for Licensure

## 11.0 Reactivation and Reinstatement

## 12.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

## 1.0 DEFINITIONS

### 1.1 Consultation (24 Del. C. § 2612)

1.1.2 Consultation in direct access. A physician must be consulted if a patient is still receiving physical therapy after 30 calendar days have lapsed from the date of the initial assessment. This consultation must be documented and could take place at any time during the initial thirty day period. The consultation can be made by telephone, fax, in writing, or in person. There is nothing in these rules and regulations or in the Physical Therapy Law that limits the number of consultations the Physical Therapist can make on the patient's behalf. The consult should be with the patient's personal physician. If the patient does not have a personal physician, the Physical Therapist is to offer the patient at least three physicians from which to choose. The referral to a physician after the initial thirty day period must not be in conflict with 24 Del. C. § 2616 (a)(8) which deals with referral for profit. If no physician consult has been made in this initial thirty day period, treatment must be terminated and no treatment may be resumed without a physician consult.

1.1.3 Consultation with written prescription from a physician, dentist, podiatrist, or chiropractor. A prescription accompanying a patient must not be substantially modified without documented consultation with the referring practitioner. The consultation can be made by telephone, fax, in writing, or in person.

### 1.2 Direct Supervision (24 Del. C. § 2611 (a))

1.2.1 Direct supervision in connection with a Physical Therapist practicing under a temporary license means:

1.2.1.1 a licensed Physical Therapist supervisor shall be on the premises when the individual with a temporary license is practicing and

1.2.1.2 evaluations and progress notes written by the individual with a temporary license shall be co-signed by the licensed Physical Therapist supervisor.

1.2.2 Direct supervision in relation to a Physical Therapist Assistant with less than one (1) year experience means a Physical Therapist shall be on the premises at all times and see each patient.

1.2.3 Direct supervision in relation to a Physical Therapist Assistant with one (1) year or more experience means that a Physical Therapist Assistant must receive on-site, face to face supervision at least once every fifth treatment day or once every three weeks, whichever occurs

first. The supervising Physical Therapist must have at least one (1) year clinical experience. The Physical Therapist must be available and accessible by telecommunications to the Physical Therapist Assistant during all working hours of the Physical Therapist Assistant.

1.2.4 The Physical Therapist is responsible for the actions of the Physical Therapist Assistant when under his/her supervision. All supervision must be documented.

1.2.5 Direct supervision in connection with an Athletic Trainer means a Physical Therapist shall be on the premises at all times in a clinical setting and see every patient.

1.2.6 At no time may a Physical Therapist supervise more than 2 Physical Therapist Assistants, 2 Athletic Trainers or 1 Physical Therapist Assistant and 1 Athletic Trainer. A Physical Therapist may only supervise 1 Physical Therapist Assistant off site. Athletic Trainers must be supervised on site.

1.2.7 Direct supervision in connection with support personnel means a licensed Physical Therapist or Physical Therapist Assistant shall be personally present and immediately available within the treatment area to give aid, direction, and instruction when procedures are performed.

1.3 On site or on premises (24 Del. C. § 2602 (5)), in connection with supervision of a Physical Therapist Assistant or Athletic Trainer, means that the Physical Therapist Assistant or Athletic Trainer must be in the same physical building as the supervising Physical Therapist. On site or on premises does not refer to attached buildings.

1.4 Support personnel (24 Del. C. § 2615) means a person(s) who performs certain routine, designated physical therapy tasks under the direct supervision of a licensed Physical Therapist or Physical Therapist Assistant. There shall be documented evidence of sufficient in-service training to assure safe performance of the duties assigned to the support personnel.

1.5 Unprofessional Conduct (24 Del. C. § 2616 (7)). Unprofessional conduct shall include departure from or the failure to conform to the minimal standards of acceptable and prevailing physical therapy practice or athletic training practice, in which proceeding actual injury to a patient need not be established. 24 Del. C. § 2616 (7). Such unprofessional conduct shall include, but not be limited to, the following:

1.5.1 - Assuming duties within the practice of physical therapy or athletic training without adequate preparation or supervision or when competency has not been maintained.

1.5.2 - The Physical Therapist who knowingly allows a Physical Therapist Assistant or Athletic Trainer to perform prohibited activities is guilty of unprofessional conduct.

1.5.3 - The Physical Therapist, Physical Therapist Assistant, or Athletic Trainer who knowingly performs

prohibited activities is guilty of unprofessional conduct.

1.5.4 - The Physical Therapist or Physical Therapist Assistant who knowingly allows support personnel to perform prohibited activities is guilty of unprofessional conduct.

1.5.5 - Performing new physical therapy or athletic training techniques or procedures without proper education and practice or without proper supervision.

1.5.6 - Failing to take appropriate action or to follow policies and procedures in the practice situation designed to safeguard the patient.

1.5.7 - Inaccurately recording, falsifying, or altering a patient or facility record.

1.5.8 - Committing any act of verbal, physical, mental or sexual abuse of patients.

1.5.9 - Assigning untrained persons to perform functions which are detrimental to patient safety, for which they are not adequately trained or supervised, or which are not authorized under these rules and regulations.

1.5.10 - Failing to supervise individuals to whom physical therapy tasks have been delegated.

1.5.11 - Failing to safeguard the patient's dignity and right to privacy in providing services regardless of race, color, creed and status.

1.5.12 - Violating the confidentiality of information concerning the patient.

1.5.13 - Failing to take appropriate action in safeguarding the patient from incompetent health care practice.

1.5.14 - Practicing physical therapy as a Physical Therapist or Physical Therapist Assistant or athletic training as an Athletic Trainer when unfit to perform procedures or unable to make decisions because of physical, psychological, or mental impairment.

1.5.15 - Practicing as a Physical Therapist, Physical Therapist Assistant or Athletic Trainer when physical or mental ability to practice is impaired by alcohol or drugs.

1.5.16 - Diverting drugs, supplies or property of a patient or a facility.

1.5.17 - Allowing another person to use his/her license.

1.5.18 - Resorting to fraud, misrepresentation, or deceit in taking the licensing examination or obtaining a license as a Physical Therapist, Physical Therapist Assistant or Athletic Trainer.

1.5.19 - Impersonating any applicant or acting as proxy for the applicant in a Physical Therapist, Physical Therapist Assistant, or Athletic Trainer licensing examination.

1.5.20 - Continuing to treat a patient, who initiated treatment without a formal referral, for longer than thirty days without a physician consult.

1.5.21 - Modifying a treatment prescription without consulting the referring physician.

1.5.22 - Failing to comply with the mandatory continuing education requirements of 24 Del. C. § 2607 (a) and Section 7 of these rules and regulations.

## 2.0 BOARD

### 2.1 Specific duties of the officers:

#### 2.1.1 The Chairperson:

2.1.1.1 Shall call meetings of the Board at least twice a year.

2.1.1.2 Shall represent the Board in all official functions and act as Board spokesperson.

#### 2.1.2 The Vice-Chairperson:

2.1.2.1 Shall substitute for the Chairperson during the officer's absence.

#### 2.1.3 The Secretary:

2.1.3.1 Shall preside when the Chairperson and Vice-Chairperson are absent.

## 3.0 PHYSICAL THERAPIST ASSISTANTS (24 Del.C. § 2602 (3))

The Physical Therapist Assistant may treat patients only under the direction of a Physical Therapist as defined in Sections 1.2.2 and 1.2.3. The Physical Therapist Assistant may perform physical therapy procedures and related tasks that have been selected and delegated by the supervising Physical Therapist. The Physical Therapist Assistant may administer treatment with therapeutic exercise, massage, mechanical devices, and therapeutic agents that use the properties of air, water, electricity, sound or light. The Physical Therapist Assistant may make minor modifications to treatment plans within the predetermined plan of care, assist the Physical Therapist with evaluations, and document treatment progress. The ability of the Physical Therapist Assistant to perform the selected and delegated tasks shall be assessed by the supervising Physical Therapist. The Physical Therapist Assistant shall not perform interpretation of referrals, physical therapy evaluation and reevaluation, major modification of the treatment plan, final discharge of the patient, or therapeutic techniques beyond the skill and knowledge of the Physical Therapist Assistant or without proper supervision.

## 4.0 ATHLETIC TRAINERS (24 Del. C. § 2602)

The Athletic Trainer in a *clinical* setting - 24 Del. C. § 2602 (5)).

The Athletic Trainer in a *nonclinical* setting - 24 Del. C. § 2602(5)).

## 5.0 SUPPORT PERSONNEL (24 Del. C. § 2615)

5.1 Treatments which may be performed by support personnel under direct supervision are:

5.1.1 gait training and ambulation

5.1.2 functional activities

5.1.3 transfer training

5.1.4 routine follow-up of specific exercises

5.1.5 hot or cold packs

5.1.6 whirlpool/Hubbard tank

5.1.7 contrast bath

5.1.8 infrared

5.1.9 paraffin bath

5.1.10 ultra sound

### 5.2 Exceptions - A support person may perform:

5.2.1 patient related activities that do not involve treatment, including transporting patients, undressing and dressing patients, and applying assistive and supportive devices without direct supervision, and

5.2.2 set up and preparation of patients requiring treatment using Physical Therapist modalities.

### 5.3 Prohibited Activities - support personnel may not perform:

5.3.1 evaluation, or

5.3.2 treatments other than those listed in Section

5.1.

## 6.0 QUALIFICATIONS OF APPLICANT (24 Del.C. § 2606)

6.1 Applications, copies of the rules and regulations, and copies of the Practice Act are available from the Division of Professional Regulation.

6.2 Applicants for Physical Therapist or Physical Therapist Assistant licensure shall not be admitted to the examination without the submission of the following documents:

6.2.1 Professional Qualifications - proof of graduation (official transcript) from an educational program for the Physical Therapist or Physical Therapist Assistant which is accredited by the appropriate accrediting agency as set forth in the Practice Act.

6.2.2 A fee in check or money order payable to the State of Delaware.

6.2.3 A completed application form.

6.3 The Board may use the Physical Therapist and Physical Therapist Assistant examination endorsed by the Federation of State Boards of Physical Therapy and the APTA, respectively.

6.4 All applicants for licensure as a Physical Therapist or Physical Therapist Assistant must successfully pass the examination described in Section 6.3 in order to become eligible for licensure. The Board will adopt the criterion-referenced passing point recommended by the Federation of State Boards of Physical Therapy.

6.5 Applicants for licensure as an Athletic Trainer must submit to the Board the following:

6.5.1 Professional Qualifications - proof of graduation (official transcript) from an educational program described in 24 Del. C. § 2606(a)(1), whether an accredited program or National Athletic Trainers Association Board of Certification (NATA BOC) internship.



6.5.2 Official letter of Athletic Trainer certification from NATABOC.

6.5.3 A check or money order made payable to the State of Delaware.

6.5.4 The completed application form.

6.6 Licenses shall expire biennially on every odd numbered year. The following items shall be submitted upon application for renewal:

6.6.1 completed renewal application form,

6.6.2 applicable fee, and

6.6.3 for individuals seeking renewal, evidence of continuing education courses as provided by Section 7.

## 7.0 MANDATORY CONTINUING EDUCATION UNITS (CEU's) (24 Del. C. §2607 (a))

7.1 Three CEU's are required for every biennial license renewal for Physical Therapists, Physical Therapist Assistants, and Athletic Trainers. The Continuing Education Unit Activity Record (CEUAR) credits shall be received at the Division of Professional Regulation, Dover, Delaware, no later than November 30<sup>th</sup> of every even numbered year and shall be received every 2 years after such date.

7.2 Individuals shall maintain the following items in order to receive credit for CEU's:

7.2.1 name of applicant seeking renewal

7.2.2 license classification (Physical Therapist, Physical Therapist Assistant, Athletic Trainer)

7.2.3 license number of applicant

7.2.4 proof of attendance at CEU course

7.2.5 date of CEU course

7.2.6 instructor(s) of CEU course

7.2.7 sponsor of CEU course

7.2.8 title of CEU course

7.2.9 number of hours of CEU course

7.3 Continuing Education Regulations, (24 Del. C. § 2607 (a)). Each licensed Physical Therapist, Physical Therapist Assistant and Athletic Trainer is responsible for continuing his/her education so that professional skills are maintained in accordance with the advancement of the profession. The purpose of this is to help Physical Therapists, Physical Therapist Assistants, and Athletic Trainers become more efficient in achieving their objectives.

7.3.1 For a licensee to renew a license, the licensee must complete three continuing education units over the two year period immediately preceding November 30<sup>th</sup> of each even year. CEU's completed before November 30<sup>th</sup> of the even year shall not be carried over to the next renewal period. Any continuing education completed in the December or January preceding renewal will apply to the next renewal period. CEU requirements shall be prorated for new licensees. If the license is granted during the six month period shown below, the following will be required for

renewal:

<u>Odd Numbered Year</u>	<u>Even Numbered Year</u>
<u>1/1- 6/30 2.5 CEUs</u>	<u>1/1- 6/30 1.5 CEUs</u>
<u>7/1-12/31 2.0 CEUs</u>	<u>7/1-12/31 .5 CEUs</u>

7.3.2 One CEU will be given for every 10 hours of an approved continuing education course. (1 contact hour = .1 CEU). Each course must include topics relevant to the field of health care as it pertains to Physical Therapy or Athletic Training. Approval of CEU's shall be within the discretion of the State Examining Board of Physical Therapists. Continuing education units that have been previously approved during the current licensing period by another agency such as a national governing body or a fellow state licensing board shall be acceptable to the Examining Board for the State of Delaware as appropriate CEU's. Any sponsors or licensees wishing to receive prior written approval of CEU courses from the Examining Board must complete a CEU Application Form. CEU's may not be carried over from one biennial period to the next one.

7.3.3 At the time of license renewal, the appropriate forms will be supplied by the Board. Proof of attendance shall be enclosed by the licensee when requested by the Board. While course brochures may be used to verify contact hours, they are not considered to be acceptable proof for use of verification of course attendance. All licensees must complete and submit to the Board the CEUAR. If randomly selected, the licensee must submit documentation of the CEU's. The CEUAR is due November 30<sup>th</sup> of the even year. All questionable CEUAR's will be re-evaluated.

7.3.4 In the event a licensee shall fail to complete the required credits by November 30, 2000, the Board may withhold issuance of a permanent license unless the CEUAR required by Section 7.3.3 is accompanied by a specific plan for making up the deficiency of necessary credits by March 31, 2001. The plan shall be deemed accepted by the Board unless within 60 days after the receipt of the CEUAR the Board notifies the licensee to the contrary. Full completion of the licensee's plan shall be reported by CEUAR not later April 15, 2001. Failure to complete the specific plan may result in the Board suspending the license issued, following a hearing pursuant to the Administrative Procedures Act, for unprofessional conduct as defined by Section 1.5.22. This provision no longer applies effective with the 2003 renewal.

7.3.5 The Board has the power to waive any part of the entire CEU requirement. Exemptions to the CEU requirement may be granted due to prolonged illness or other incapacity. Application for exemption shall be made in writing to the Board by the applicant for renewal and must be received by the Board no later than November 30<sup>th</sup> of the end of the respective CEU term.

7.3.6 CEU's may be earned through Board approved courses in colleges and universities, extension courses, independent study courses, workshops, seminars,

conferences, lectures, videotapes, professional presentations and publications, and in-services oriented toward the enhancement of their respective professional's practice. CEU programs shall be conducted under responsible sponsorship, capable direction and qualified instruction. The program may include staff development activities of agencies and cross-disciplinary offerings.

7.3.7 The following are examples of acceptable continuing education which the Board may approve. The Board will determine the appropriate number of contact hours for these categories of continuing education, subject to any limitation shown below.

7.3.7.1 professional meetings including national, state, chapter, and state board meetings

7.3.7.2 seminars/workshops

7.3.7.3 staff/faculty in-services

7.3.7.4 first time presentation of professionally oriented course/lecture (0.3 CEU/hour per presentation)

7.3.7.5 approved self studies including:

- videotapes, if:

-there is a sponsoring agency

-there is a facilitator or program official

present

-the program official is not the only

attendee

- correspondence course, if a sponsoring

agency provides a certificate of completion

7.3.8 The following are also examples of acceptable continuing education in the amount of CEU's shown.

7.3.8.1 university/college courses:

1.0 CEU for semester

0.8 CEU for trimester

0.7 CEU for quarter

7.3.8.2 passing of licensing examination (1.5 CEU's)

7.3.8.3 original publication in peer reviewed publication (0.3 CEU)

7.3.8.4 original publication in non-peer reviewed publication (0.1 CEU)

7.3.8.5 holding of an office (0.3 CEU), to include:

- executive officer's position for the national or state professional associations (President, Vice-President, Secretary, Treasurer)

- member, Examining Board of Physical Therapists

7.3.8.6 acting as the direct clinical instructor providing supervision to a Physical Therapist, Physical Therapist Assistant or Athletic Trainer student officially enrolled in an accredited institution during an internship (40 contact hours = 0.1 CEU)

8.0 ADMISSION TO PRACTICE, LICENSURE BY RECIPROCITY (24 Del. C. § 2610)

Definition - The granting of a license to an applicant who meets all the requirements set forth in this section and 24 Del. C. § 2610.

8.1 The reciprocity applicant shall submit the documentation listed in rules 6.2 or 6.5.

8.2 An applicant shall be deemed to have satisfied this section upon evidence satisfactory to the Board that he/she has complied with the standards set forth below:

8.2.1 The Physical Therapist or Physical Therapist Assistant applicant has passed the examination in the state, territory, or the District of Columbia in which he/she was originally licensed/registered. The passing score shall be 1.5 standard deviation below the national norm for those Physical Therapists and Physical Therapist Assistants having taken the examination prior to 1990.

8.2.2 All Physical Therapist/Physical Therapy Assistant reciprocity applicants shall supply his/her examination scores to the Board. The applicant may obtain his/her scores from the regulatory body of the state, territory, or the District of Columbia in which he/she was originally licensed/registered or from the FSBPT Score Transfer Service. From Physical Therapist applicants who were licensed/registered by a state, territory, or the District of Columbia only prior to 1963, the Board shall accept the following:

8.2.2.1 - Professional Examination Service-American Physical Therapy Association (PES-APTA) examination scores with a passing grade of 1.5 standard deviation below the national norm on all sections, or

8.2.2.2 - other examining mechanisms which in the judgment of the Board were substantially equal to the mechanisms of the State of Delaware at the time of examination.

8.2.3 For the Athletic Trainer candidate, the passing score shall be that which was established at time of examination. All sections of the examination shall be passed. The reciprocity applicant shall supply his/her examination scores to the Board.

9.0 TEMPORARY LICENSURE (24 Del. C. § 2611)

9.1 The Board may issue a temporary license to all applicants who have submitted to the Board the documents listed in Rule 6.2 and Rule 6.5, respectively, and who have been determined to be eligible to take the examination. The Board shall accept a letter signed by the Physical Therapist or Physical Therapist Assistant applicant's school official stating that the applicant has completed all requirements for graduation; provided, however, that the applicant shall submit to the Board an official transcript as soon as it becomes available. The Board will determine the Physical Therapist or Physical Therapist Assistant applicant's eligibility to take the examination. In the case of Athletic Trainer applicants for temporary license, a letter from NATA stating the applicant's eligibility to take the NATA

examination will be required. All applicants may practice only under the direct supervision of a licensed Physical Therapist. The license shall remain effective for 90 days from the date of approval. It shall automatically expire upon notice to the applicant of his/her failure to pass the license examination. After the applicable fee and written application have been submitted, the Board may renew the temporary license if the applicant is eligible to retake the examination. The temporary license of an applicant may be extended at the discretion of the Board chair or other officer, upon a showing of extenuating circumstances pending the next scheduled Board meeting.

9.2 Applicants requesting reciprocity as a Physical Therapist, Physical Therapist Assistant, and Athletic Trainer. The Board may issue a temporary license to an applicant upon the applicant's submission of letters of good standing from all jurisdictions in which the applicant is or has ever been licensed. The temporary licensee may practice only under the direct supervision of an applicable licensed professional.

9.3 Applicants engaged in a special project, teaching assignment, or medical emergency as described in 24 Del. C. § 2611 (b) must submit letters of good standing from all jurisdictions in which the applicant is or has ever been licensed.

#### 10.0 FOREIGN TRAINED APPLICANT FOR LICENSURE (24 Del. C. § 2606 (b))

10.1 Applicants for licensure who are graduates of a Physical Therapist, Physical Therapist Assistant school or Athletic Trainer program located in a foreign country shall complete all of the following requirements before being admitted to the examination.

10.1.1 - The applicant shall submit proof satisfactory to the Board of graduation from an education program appropriate to their profession in a foreign country. Each foreign applicant must demonstrate that they have met the minimum education requirements as presented by the Federation of State Boards in the Course Work Evaluation Tool for Persons Who Received Their Physical Therapy Education Outside the United States. The applicant shall arrange and pay for a credential evaluation of such foreign school's program to be completed by one of four independent agencies:

International Educational Research Foundation, Inc.  
P.O. Box 66940  
Los Angeles, CA 90066

International Consultants of Delaware, Inc.  
109 Barksdale Professional Center  
Newark, DE 19711  
Educational Credential Evaluators, Inc.  
P.O. Box 92970

Milwaukee, WI 53202-0970

Foreign Credentialing Commission for Physical Therapists  
P.O. Box 25827  
Alexandria VA 22313-9998

10.1.2 The applicant shall complete the requirements of rules 6.2 or 6.5.

10.1.3 The applicant shall pass the examination described in rules 6.3 and 6.4.

#### 11.0 REACTIVATION AND REINSTATEMENT (24 Del. C. § 2607)

11.1 Any person who has been registered in the State and is neither residing within the State nor actively engaged in the practice of physical therapy in the State may at their request be placed on the inactive register for the remainder of the biennial licensure period. Subsequent requests for extensions of inactive status should be submitted biennially. The Board may reactivate an inactive license if the Physical Therapist, Physical Therapist Assistant or Athletic Trainer:

11.1.1 files a written request for reactivation;

11.1.2 has been actively engaged in the practice for the past five years. If the licensee has not met this condition, the following requirements shall be completed:

11.1.2.1 - The Physical Therapist, Physical Therapist Assistant, or Athletic Trainer working in a clinical setting shall work under the direct supervision of a Physical Therapist/Athletic Trainer in Delaware for a minimum of six months.

11.1.2.2 - The Athletic Trainer working in a nonclinical setting shall work under the direct supervision of an Athletic Trainer in Delaware for a minimum of six months.

11.1.2.3 - At the end of the period, the supervising Physical Therapist/Athletic Trainer shall certify to the applicant's clinical competence on forms supplied by the Board;

11.1.3 submits proof of completion of 1.5 CEU's during the previous 12 months.

11.2 Provided reinstatement is requested within 5 years of the expiration date, the Board may reinstate the license of a Physical Therapist, Physical Therapist Assistant, or Athletic Trainer who allowed their license to lapse without requesting placement on the inactive register if the Physical Therapist, Physical Therapist Assistant, or Athletic Trainer:

11.2.1 completes a form supplied by the Board

11.2.2 provides proof of completion of 3.0 CEU's during the previous 24 months

11.3 If the license has been expired over five years, the Physical Therapist/Physical Therapist Assistant/Athletic Trainer must file a new application.

#### 12.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

12.1 If the report is received by the chairperson of the regulatory Board, that chairperson shall immediately notify the Director of Professional Regulation or his/her designate of the report. If the Director of Professional Regulation receives the report, he/she shall immediately notify the chairperson of the regulatory Board, or that chairperson's designate or designates.

12.2 The chairperson of the regulatory Board or that chairperson's designate or designates shall, within 7 days of receipt of the report, contact the individual in question and inform him/her in writing of the report, provide the individual written information describing the Voluntary Treatment Option, and give him/her the opportunity to enter the Voluntary Treatment Option.

12.3 In order for the individual to participate in the Voluntary Treatment Option, he/she shall agree to submit to a voluntary drug and alcohol screening and evaluation at a specified laboratory or health care facility. This initial evaluation and screen shall take place within 30 days following notification to the professional by the participating Board chairperson or that chairperson's designate(s).

12.4 A regulated professional with chemical dependency or impairment due to addiction to drugs or alcohol may enter into the Voluntary Treatment Option and continue to practice, subject to any limitations on practice the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional, deem necessary, only if such action will not endanger the public health, welfare or safety, and the regulated professional enters into an agreement with the Director of Professional Regulation or his/her designate and the chairperson of the participating Board or that chairperson's designate for a treatment plan and progresses satisfactorily in such treatment program and complies with all terms of that agreement. Treatment programs may be operated by professional Committees and Associations or other similar professional groups with the approval of the Director of Professional Regulation and the chairperson of the participating Board.

12.5 Failure to cooperate fully with the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate in regard to the Voluntary Treatment Option or to comply with their requests for evaluations and screens may disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board chairperson or that chairperson's designate or designates shall cause to be activated an immediate investigation and institution of disciplinary proceedings, if appropriate, as outlined in subsection (h) of this section.

12.6 The Voluntary Treatment Option may require a regulated professional to enter into an agreement which

includes, but is not limited to, the following provisions:

12.6.1 Entry of the regulated professional into a treatment program approved by the participating Board. Board approval shall not require that the regulated professional be identified to the Board. Treatment and evaluation functions must be performed by separate agencies to assure an unbiased assessment of the regulated professional's progress.

12.6.2 Consent to the treating professional of the approved treatment program to report on the progress of the regulated professional to the chairperson of the participating Board or to that chairperson's designate or designates or to the Director of the Division of Professional Regulation or his/her designate at such intervals as required by the chairperson of the participating Board or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate, and such person making such report will not be liable when such reports are made in good faith and without malice.

12.6.3 Consent of the regulated professional, in accordance with applicable law, to the release of any treatment information from anyone within the approved treatment program.

12.6.4 Agreement by the regulated professional to be personally responsible for all costs and charges associated with the Voluntary Treatment Option and treatment program(s). In addition, the Division of Professional Regulation may assess a fee to be paid by the regulated professional to cover administrative costs associated with the Voluntary Treatment Option. The amount of the fee imposed under this subparagraph shall approximate and reasonably reflect the costs necessary to defray the expenses of the participating Board, as well as the proportional expenses incurred by the Division of Professional Regulation in its services on behalf of the Board in addition to the administrative costs associated with the Voluntary Treatment Option.

12.6.5 Agreement by the regulated professional that failure to satisfactorily progress in such treatment program shall be reported to the participating Board's chairperson or his/her designate or designates or to the Director of the Division of Professional Regulation or his/her designate by the treating professional who shall be immune from any liability for such reporting made in good faith and without malice.

12.6.6 Compliance by the regulated professional with any terms or restrictions placed on professional practice as outlined in the agreement under the Voluntary Treatment Option.

12.7 The regulated professional's records of participation in the Voluntary Treatment Option will not reflect disciplinary action and shall not be considered public records open to public inspection. However, the participating Board may consider such records in setting a disciplinary

sanction in any future matter in which the regulated professional's chemical dependency or impairment is an issue.

12.8 The participating Board's chairperson, his/her designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional at any time during the Voluntary Treatment Option, restrict the practice of a chemically dependent or impaired professional if such action is deemed necessary to protect the public health, welfare or safety.

12.9 If practice is restricted, the regulated professional may apply for unrestricted licensure upon completion of the program.

12.10 Failure to enter into such agreement or to comply with the terms and make satisfactory progress in the treatment program shall disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board shall be notified and cause to be activated an immediate investigation and disciplinary proceedings as appropriate.

12.11 Any person who reports pursuant to this section in good faith and without malice shall be immune from any civil, criminal or disciplinary liability arising from such reports, and shall have his/her confidentiality protected if the matter is handled in a nondisciplinary matter.

12.12 Any regulated professional who complies with all of the terms and completes the Voluntary Treatment Option shall have his/her confidentiality protected unless otherwise specified in a participating Board's rules and regulations. In such an instance, the written agreement with the regulated professional shall include the potential for disclosure and specify those to whom such information may be disclosed.

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## **DEPARTMENT OF AGRICULTURE**

Statutory Authority: 29 Delaware Code,  
Section 4815(b)(3)b.2.D. (29 **Del.C.**  
4815(b)(3)b.2.D.

The Secretary of Agriculture proposes on behalf of the **Board of the Delaware Standardbred Breeders' Fund** Program sixteen new chapters for the administration of the Program that are summarized as follows:

Adopt chapter 1 to specify the legislative source of the regulatory authority of the Board of the Delaware Standardbred Breeder's Fund Program and to establish procedures for managing the funds of the Program and governing actions by the Board.

2. Adopt chapter 2 to define more specifically terms referenced in the regulations and statute.

3. Adopt chapter 3 to specify the rules governing eligibility for Delaware-bred races under the Program.

4. Adopt chapter 4 to specify the rules governing eligibility for bonus payments paid under the Program.

5. Adopt chapter 5 to specify the rules governing eligibility of sires for awards under the Program.

6. Adopt chapter 6 to specify the rules governing and the records required for registration in the Program.

7. Adopt chapter 7 to establish a process for interested parties to register a horse in the Program.

8. Adopt chapter 8 to establish a requirement for the Administrator of the Program to maintain a record of expenses for the Program.

9. Adopt chapter 9 to establish rules governing purses and bonus awards under the Program.

10. Adopt chapter 10 to establish responsibilities of owners and lessees under the Program.

11. Adopt chapter 11 to establish fee structures and procedures for sires under the Program.

12. Adopt chapter 12 to establish fee structures and procedures for renewal of sire registration under the Program.

13. Adopt chapter 13 to establish the authority of the Administrator of the Program to suspend or deny registration in the Program and to establish a process for appealing said suspensions or denials.

14. Adopt chapter 14 to specify the rules governing races run under the Program.

15. Adopt chapter 15 to establish fee structures and procedures for nomination and sustaining payments for horses racing under the Program.

16. Adopt chapter 16 to specify the rules governing investment of funds received pursuant to §4815(b)(3)b.2.D. of Title 29 of the Delaware Code and any interest earned thereupon.

The public may obtain copies of the proposed regulations from the Department of Agriculture, 2320 South DuPont Highway, Dover, DE, 19801 or by calling (302) 739-4811. The Department of Agriculture will hold a public hearing on July 12, 2000 at the Department of Agriculture, 2320 South DuPont Highway, Dover, DE 19801 at 4:30 p.m. Anyone wishing to submit written comments as a supplement to, or in lieu of, oral testimony, should submit such comments by July 30, 2000 to the Department of Agriculture at the address above.

### 1.0 Introduction

1.1 These regulations are authorized pursuant to §4815(b)(3)b.2.D. of Title 29 of the Delaware Code, which established in the State of Delaware a Delaware Standardbred Breeder's Program (herein "the Program") for:

(1) Standardbred horses;

(2) bred in a manner prescribed in Section 2.0

herein;

(3) the product of a registered Delaware stallion;

(4) who are registered and whose sire and mare are

registered with the Delaware Harness Racing Commission (herein "the Commission") and the Administrator of the Breeder's Program (herein "the Administrator") as such; and,

(5) listed in their registry books.

Those horses eligible to race under said Delaware Standardbred Breeder's Program shall be any foal of any registered Delaware stallion standing at a Delaware breeding farm and either owned by a resident of the State of Delaware or owned by a non-resident who holds a lease for a period of the breeding season and will stand the stallion for that full season on a Delaware breeding farm. A copy of any such lease shall be filed with the United States Trotting Association, the Administrator of the Breeder's Program, and the Delaware Harness Racing Commission.

1.2 The Board of the Delaware Standardbred Breeder's Program (herein "the Board") is authorized to do all that is reasonable and necessary for the proper administration of the Program and shall prepare, issue and promulgate rules and regulations providing for:

(1) Classes and divisions of races, eligibility of horses and owners therefor and purses and bonuses to be awarded;

(2) Nominating, sustaining and entry fees on horses and races;

(3) Such temporary programs including eligibility of horses, breeding, and other matters as may be necessary to make the Program operable as soon as possible;

(4) Registration and certification of Delaware stallions, mares bred to such stallions and foals produced thereby; and,

(5) Such other matters as the board determines to be necessary and appropriate for the proper administration and implementation of the Program.

1.3 The funds for the Delaware Standardbred Breeder's Program pursuant to §4815(b)(3) of Title 29 of the Delaware Code and any nominating, sustaining and entry fees provided for herein shall be administered by the Delaware Department of Agriculture by deposit in a trust account entitled Delaware Standardbred Breeders' Fund. The Board of the Delaware Standardbred Breeder's Program shall approve an annual budget including the payment of purses and awards, cost of administration, reimbursement of expenses of members of the Board, promotional expenses, and any other appropriate expenses. The budget shall be administered by the Secretary of Agriculture or his designee in consultation with the Board and in a manner consistent with the state laws and procedures. A report shall be prepared and filed annually by the secretary with the Delaware Harness Racing Commission and the Board of the Breeder's Program Fund setting forth an itemization of all deposits to and expenditures from said fund.

1.4 Races for the Program shall be run at each licensed harness track in the State of Delaware. Said races and purses

and awards awarded therefore shall be pursuant to the rules and regulations of the Board of the Delaware Standardbred Breeder's Program hereunder, and the Delaware Harness Racing Commission.

1.5 The Board of the Delaware Standardbred Breeder's Program can amend these regulations through a vote of 2/3 majority of the entire board. Changes to the rules of eligibility for the Delaware Standardbred Breeder's Program will be effective at the beginning of the next breeding season and the corresponding racing season.

## 2.0 Definitions.

The following words and terms, when used in this part for the purposes of the Delaware Standardbred Breeder's Fund Program, have the following meanings, unless the context clearly indicates otherwise:

"Bred"---Bred shall refer to any form of insemination inside the State of Delaware by a Delaware sire, including insemination using semen transported within the State of Delaware, provided that such semen is not frozen or desicated in any way or at any time. Bred shall also refer to foals of mares bred outside the State of Delaware by a Delaware sire through interstate semen transportation when such semen is not frozen or desicated in any way or at any time, provided that owners of mares that produce foals from Delaware sires eligible for this program that are bred through interstate semen transportation shall not be eligible for bonuses paid to owners of mares under the Delaware Standardbred Breeder's Program set forth in Section 4 herein. A foal conceived through embryo transplanted is not eligible for nomination to the Delaware Standardbred Breeder's Program under any circumstances.

"Breeder"---A breeder is the owner of the dam at the time of breeding through foaling.

"Breeding Season"---A breeding season runs from February 15th to December 31st of the calendar year.

"Delaware-bred horse"---A Delaware-bred horse is a standardbred by a Delaware sire and registered with the Harness Racing Commission and Administrator of the Breeder's Program, provided that for the purposes of determining eligibility for race years 2002 and 2003 Delaware-bred horses shall also include any foal of a 100% wholly owned mare at the time of breeding through foaling by a Delaware resident registered with the Harness Racing Commission and Administrator of the Breeder's Program by August 15th of the yearling year.

"Delaware resident"---A Delaware resident is as defined in §10032 of Title 3 of the Delaware Code.

"Delaware sire"---A Delaware sire is a standardbred stallion that regularly stands for a breeding season in Delaware, does not compete for purses, and is registered with the Harness Racing Commission and Administrator of the Breeder's Program. A Delaware sire may be: a) owned by a resident of the State of Delaware and

standing the entire breeding season in the State of Delaware; or b) owned by a resident of a state other than Delaware, but standing the entire breeding season in Delaware, verified by a copy of a the lease filed with the Administrator of the Program and the Harness Racing Commission at the time of registration for the Program, as provided in section 1.1 above; or c) owned jointly by a resident (or residents) and non-resident (or non-residents) of Delaware and standing the entire breeding season in Delaware with the same lease requirements as in b) above.

“Private Treaty”— No stallion participating in the Delaware Standardbred Breeder’s Program may be offered under private treaty. Each stallion registered in the Delaware Standardbred Breeder’s Program must make public the maximum possible breeding fee.”

Such definitions shall not affect the use of that term by the Delaware Harness Racing Commission for purposes other than for the Breeder’s Fund Program.

### 3.0 Eligibility for Delaware-bred races.

To be eligible for races under the Program for race years 2002 and 2003, a horse, which shall be registered with the Administrator and Commission by August 15th of its yearling year, shall be: 1) the product of a 100% wholly owned mare at the time of breeding through foaling by a Delaware resident, which mare shall be registered with the Administrator and Commission by August 15, 2000 for the breeding seasons of 1999 and 2000 and by August 15, 2001 for the breeding season of 2001; and/or, 2) the product of a Delaware-sire, which sire shall be registered with the Administrator and Commission by March 1, 2000 for the breeding seasons of 1999 and 2000 and by August 15, 2001 for the breeding season of 2001 .

To be eligible for races under the Program for race year 2004, the horse shall be a Delaware sired 2 year old registered with the Administrator and Commission by August 15th of its yearling year or a 3 year old product of a 100% wholly owned mare at the time of breeding through foaling by a Delaware resident, which mare shall have been registered with the Administrator and Commission by August 15, 2000 for the breeding seasons of 1999 and 2000 and by August 15, 2001 for the breeding season of 2001 or a 3 year old product of a Delaware-sire, which sire shall have been registered with the Administrator and Commission by March 1, 2000 for the breeding seasons of 1999 and 2000 and by August 15, 2001 for the breeding season of 2001.

To be eligible for races under the Program for race year 2005 and thereafter, the horse shall be a Delaware sired 2 or 3year old registered with the Administrator and Commission by August 15th of its yearling year.

### 4.0 Eligibility of breeders for bonus payments.

Bonus payments of eight percent (8%) of money earned in the Program by the foals shall be paid to the owner of the

mare at the time of breeding that is bred to Delaware sires to produce that foal. Bonus payments of two percent (2%) of money earned in the Program by the foals shall be paid to owners of stallions standing in Delaware. In order for a Delaware-bred horse to be eligible to earn an award for its breeder, in a race conducted by a licensed harness race track in Delaware, the foals, mares, and stallions shall be registered in accordance with these regulations with the Harness Racing Commission and Administrator of the Breeder’s Program prior to entry for the race. In race year 2002, bonus payments shall be restricted to 2 year olds. For race years 2003 and thereafter, bonus payments shall not exceed \$70,000. In the event such payments would exceed these limits, owners eligible for bonus payments shall receive a prorated share of those monies allocated toward the payment of bonus payments.

### 5.0 Eligibility of owners of Delaware sires for awards.

In order for a Delaware sire to be eligible to earn an award for its owner, the sire shall have been registered as a sire of Delaware with the Harness Racing Commission and Administrator of the Breeder’s Program during each breeding season when the sire inseminated the dams that, as a result of that insemination, produced Delaware-breds. To be eligible for a sire award, it is necessary that the foal entitling the sire owner to the award be itself registered in accordance with these regulations.

### 6.0 Records of registration.

Foals and sires eligible for registration shall be registered on official registration forms approved by the Harness Racing Commission and maintained by the Administrator of the Breeder’s Program. The registrar shall certify thereon the name and address of the owner, breeder, farm where mare was inseminated, farm on which this horse was foaled, owner of stallion at time the mare was inseminated, owner of the mare at the time of breeding, notice of semen transfer, stallion by which the mare was inseminated following the birth of the standardbred to be registered, breeder social security or tax identification number, United States Trotting Association registration number, name of foal, color and sex of foal, date of foaling, sire, dam, sire of the dam, signature of the owner, or breeder or authorized representative and the date of application. The registration record shall be maintained at the Administrator of the Breeder’s Program and be open to public inspection during normal business days and hours at the State Department of Agriculture. Immediately upon completion and filing of the form, the Administrator of the Breeder’s Program shall cause a correct copy of it to be filed with the offices of the State Department of Agriculture.

### 7.0 Appeals.

A person having an interest in a matter concerning the

registration of a horse in the Breeder's Program shall have the right to file objections or exceptions to a registration and to the facts set forth therein within 30 days of the filing of the copy of the registration with the Administrator and the Delaware Harness Racing Commission. The objections or exceptions shall be filed in writing with the Administrator of the Breeder's Program and a duplicate delivered to the Harness Racing Commission within the 30-day time period. An interested party aggrieved of an action taken by the Administrator may appeal to the Commission in the manner prescribed for appeals. The Commission shall hear and determine an appeal de novo. In the absence of objections or exceptions timely made, a registration shall be deemed final and binding and an official record of the Commission at the expiration of the 30th day of the delivery to the Commission. The Commission shall thereafter have the right on its own motion to correct an error or inaccuracy that it may find within the records.

#### 8.0 Records of expenses.

The Administrator of the Breeder's Program shall maintain a complete record of reasonable and necessary expenses and will submit quarterly estimates to the Board and the Secretary of Agriculture, on the basis of which the Secretary may disburse advances. The quarterly estimated statements of expenses and advances shall be reconciled annually with a certified statement of expenses to be prepared by an auditor approved in advance by the Board. The Board may thereafter review them and after approval of allowable items shall then reimburse the Administrator of the Breeder's Program for expenses the Board finds reasonable and appropriate to this program. If advances on account of expenses exceed actual expenses as approved at the end of a given year, the excess shall be deemed disbursed on account of the ensuing year's expenses.

#### 9.0 Purses and Bonus Awards

9.1 A purse or bonus awarded under this section shall be in accordance with the standards for purses at each racing meet as approved by order of the Commission. The racing association shall maintain a separate ledger of such purses and bonuses and shall transmit a certified copy of allowances, bonus payments, and purses made no later than the 10th day of each month of the meet to the Commission. After the Commission has reviewed and approved them, it shall reimburse the racing association for the advances made which the Commission finds proper.

9.2 Administrator of the Breeder's Program shall compile awards earned by breeders and owners of Delaware sires and maintain a separate ledger of them. A certified report of awards earned shall be forwarded to the Commission on a monthly basis during the racing season. The list of awards will be forwarded to Administrator of the Breeder's Program who shall ensure payment to the

awardees, subject to approval by the Commission.

9.3 A person interested in the awards, allowances, prizes and purses and objecting to calculations or determinations thereof as shown on the records of the Administrator of the Breeder's Program and the Harness Racing Commission shall be responsible for taking written appeals to the Commission in the manner provided for appeals from decisions of the Administrator pertaining to registrations.

9.4 The Board will have the right to review and approve fees and charges imposed by the Administrator of the Breeder's Program. The charge or fee may not be imposed without prior approval by the Board.

9.5 Records, funds and accounts of funds, prizes, purses, allowances and awards under this program shall be maintained separate from other records, funds and accounts and may not become co-mingled with other matters. The records, funds and accounts shall be kept continuously open for inspection by the Administrator of the Breeder's Program.

#### 10.0 Responsibilities-Owners or lessees of standardbred stallions and mares

10.1 An owner or lessee of a standardbred stallion who desires to use him for breeding purposes and to have him qualify for the Delaware Standardbred Breeders' Fund Program, shall register the stallion by December 1st of the approaching breeding season with the Delaware Harness Racing Commission and the Administrator of the Breeder's Program or by January 1st of the approaching breeding season with an additional supplemental fee equal to the standard registration fee. For breeding season 1999 and 2000, an owner or lessee of a standardbred stallion who desires to use him for breeding purposes and to have him qualify for the Delaware Standardbred Breeders' Fund Program, shall register the stallion by March 1, 2000. Unless the stallion is contracted to stand at stud in the southern hemisphere, the stallion shall stand in the State of Delaware for the remainder of the breeding season. If a stallion is contracted to stand at stud in the southern hemisphere, a copy of said contract must be provided to the Administrator of the Program and the Harness Racing Commission at the time of application for eligibility in the Program or, in the event the contract is entered into at a subsequent date, within ten days of entering into the contract. A virgin standardbred stallion entering stud for the first time shall be registered prior to his first breeding and shall stand in the State of Delaware the remainder of the breeding season, unless he is contracted to stand at stud in the southern hemisphere. A stallion shall be registered on an application for standardbred stallion certificate for eligibility established by the Administrator of the Breeder's Program in consultation with the Harness Racing Commission.

10.2 An owner or lessee of a stallion eligible for the



Delaware Standardbred Breeders' Fund Program shall designate a resident of Delaware as the authorized agent who shall be responsible for the registrations and records of the farm; and complying with the requirements of the Delaware Standardbred Breeders' Fund Program. The "Authorized Agent" form shall be filed with the stallion registration.

10.3 In order for foals of 100% wholly owned mares at the time of breeding through foaling by a Delaware resident to be eligible for races under the Program for race years 2002 and 2003, said mares shall be registered with the Administrator and Commission by August 15, 2000 for the breeding seasons of 1999 and 2000. No fee shall be charged for registering said mare.

#### 11.0 Sire Registration Fees

11.1 Sires shall initially register for the Delaware Standardbred Breeder's Program no later than December 1st of the approaching breeding season, or no later than January 1st with an additional supplemental registration fee equal to the regular registration fee. For sires registering in breeding season 2000, sires shall initially register for the Delaware Standardbred Breeder's Program no later than March 1, 2000.

11.2 All fees must accompany this registration and must be submitted by registered or certified mail.

11.3 Registration fees for the Delaware Standardbred Breeder's Program are non-refundable.

11.4 Sire registration fee for a stallion shall be \$500.00. Sire registration for those sires standing in the State of Delaware and registering for breeding seasons prior to 2001 in accordance with these regulations shall be charged a single fee of \$250.00.

11.5 The annual stallion registration fee may be used to offset reasonable expenses related to administering and promoting the Delaware Standardbred Breeder's Program. Any fees beyond reasonable expenses shall be invested in the endowment account of the Delaware Standardbred Breeder's Program.

11.6 The annual stallion registration fee may be used to offset reasonable expenses related to administering and promoting the Delaware Standardbred Breeder's Program. Any fees beyond reasonable expenses shall be invested in the endowment account of the Delaware Standardbred Breeder's Program. An owner of a standardbred stallion registered with the Administrator and Commission shall submit by December 1st of each year the stallion registration fee, or January 1st with the supplemental fee provided in section 10 above and a report for each stallion that states each mare bred by said stallion during the preceding twelve (12) months. For breeding seasons prior to breeding season 2001, an owner of a standardbred stallion registered with the Administrator and Commission shall submit by March 1, 2000 the stallion registration fee of \$250 and any other documentation required by the Administrator and

Commission to verify where the stallion stood during the period for which the stallion or its progeny seek to register.

#### 12.0 Sire Renewal Fees

12.1 The registration of a stallion that remains in the state for more than one (1) breeding season shall be renewed annually.

12.2 The annual renewal fee for registration of stallions to the Delaware Standardbred Breeders' Fund Program shall be \$500.

12.3 The annual stallion registration fee may be used to offset reasonable expenses related to administering and promoting the Delaware Standardbred Breeder's Program. Any fees beyond reasonable expenses shall be invested in the endowment account of the Delaware Standardbred Breeder's Program. An owner of a standardbred stallion registered with the Administrator and Commission shall submit by December 1st of each year the stallion registration fee and a report for each stallion that states each mare bred by said stallion during the preceding twelve (12) months.

#### 13.0 Penalties and Suspension from the Program

13.1 If an owner or a lessee of a registered stallion fails to furnish information the Administrator of the Breeder's Program has requested relating to the registration or renewal of registration of a horse, the Administrator of the Breeder's Program shall:

(a) Suspend or deny the registration of the stallion; and

(b) Schedule a hearing within thirty days of the denial or suspension.

After the hearing, the Administrator of the Breeder's Program shall determine within ten working days whether the failure to furnish information was willful; and:

(a) Suspend the registration; or

(b) Rescind its suspension of the registration; or

(c) Deny or revoke the registration; or

(d) 1. Deny or revoke the registration; and

2. Bar from further registration, horses owned by the person who executed the application containing false or misleading information.

If the Administrator of the Breeder's Program determines that a registration is incorrect, or an application for registration, renewal of registration, or transfer of a registered stallion contains false or misleading information, the Administrator shall:

(a) Suspend or deny the registration of the stallion; and

(b) Summon the person who executed the application, and any person who has knowledge relating to the application, to appear before the Administrator at a hearing;

After the hearing, the Administrator of the Breeder's Program shall determine within ten working days

whether the person knew or had reason to know that the information was false or misleading, and:

(a) Rescind its suspension or denial of the registration; or

(b) Suspend, deny, or revoke the registration; or

(c) 1. Deny or revoke the registration; and

2. Bar from further registration, horses owned by the person who executed the application containing false or misleading information.

If a person summoned by the Administrator of the Breeder's Program fails to respond to the summons within ten working days, the Administrator of the Breeder's Program:

(a) Shall suspend or deny the registration of the stallion;

(b) Notify the person in writing of the action taken by the Commission; and

(c) May:

1. Deny or revoke the registration; and

2. Bar from further registration, horses owned by the person who executed the application containing false or misleading information.

### 13.2 Appeals

Appeals of decisions to deny or suspend registrations by the Administrator of the Breeder's Program may be appealed to the Delaware Harness Racing Commission within thirty days of the action by the Administrator of the Breeder's Program, subject to the same rules and procedures for handling appeals established for the Delaware Harness Racing Commission.

### 14.0 Races

14.1 The purses for all races, including walkovers, under this Breeder's Program shall be distributed on the following percentage basis: 50-25-12-8-5. Points to qualify for the finals shall be distributed on the same percentage basis. In fields with more than five horses, places six through nine shall receive 4-3-2-1 points, respectively.

14.2 In the case of dead heats, points for the two positions shall be divided equally among those horses finishing in a dead heat. For example, if two horses finish in a dead heat for second, those horses would divide 25 plus 12 points to receive 18.5 percent of the purse or 18.5 qualifying points each.

14.3 The percentage basis established by subsection (1) of this section shall apply at each of the associations licensed by the Delaware Harness Racing Commission.

14.4 If circumstances prevent the racing of an event, and the race is not drawn, all stake payments shall be refunded to the purse account of the Delaware Standardbred Breeder's Fund Program.

14.4 The monies provided for purses and bonus payments shall be distributed evenly between the races of each:

1. Age;

2. Sex; and

3. Gait.

The minimum purses for elimination races for both pacers and trotters shall be \$5,000. The minimum purses for finals shall be \$30,000. The Board of the Delaware Standardbred Breeder's Program, pursuant to a recommendation from the Administrator of the Program, may agree to increase purses should funds and other conditions permit.

14.5 No horse is eligible to declare unless it has at least one charted satisfactory performance line within 30 days of declaration and must meet the following qualifying standards:

<u>2 Year Olds</u>		<u>3 Year Olds</u>	
<u>Pacers</u>	<u>Trotters</u>	<u>Pacers</u>	<u>Trotter</u>
<u>2:10</u>	<u>2:14</u>	<u>2:06</u>	<u>2:12</u>

Horses that meet the qualifying standards for a preliminary leg at each racetrack are qualified for all subsequent legs and the final at that racetrack.

14.6 The Administrator of the Delaware Standardbred Breeder's Fund Program shall be responsible for races conducted under the Delaware Standardbred Breeder's Fund Program and shall ensure that:

(a) each track declares the time specified for races under this program by proper notice and racing dates are issued for sires stakes after the track's race dates are set.

(b) entry for races run under the Delaware Standardbred Breeder's Fund Program is required to be received by the Racing Office by noon three days in advance of the scheduled race date in a box designated for this purpose.

(c) The Eligibility and class of all horses running in races is carefully screened.

(d) The Administrator, or his/her designee, is present for the judges' draw for all races conducted under the Delaware Standardbred Breeder's Fund Program

### 15.0 Nominations and Sustaining Payments.

15.1 Nomination and sustaining payments shall be made to the Delaware Standardbred Breeder's Fund in U.S. funds.

15.2 A fee payment required by this section shall be postmarked no later than the due date that is specified for the fee by this section.

15.3 Beginning with the yearlings of 2001, the yearling nomination fee shall be:

(a) Forty (40) dollars each; and

(b) Due by August 15 of the yearling year.

15.4 A nomination shall be accompanied by a photocopy of the United States Trotting Association registration certificate. Supplemental fees of \$25 shall be assessed if the USTA registration certificate does not accompany the nomination. No nomination shall be

accepted where a USTA registration certificate is not obtained and submitted within 60 days of nomination to the Delaware Standardbred Breeder's Program.

15.5 If the August 15 deadline to nominate a yearling is missed, a late supplemental payment of \$350 shall be required. The late supplemental payment shall be accepted if a) it is received by April 1 of the two (2) year old year; and b) the two (2) year old March 15th payment has been made.

15.7 Sustaining payments shall be as follows:

(a) TWO (2) YEAR OLD PAYMENTS	
March 15th	\$100
May 15th	\$200
Declaration Fee (for each track)	\$500
March 15th payment must be made to ensure eligibility as a three (3) year old.	

(c) THREE (3) YEAR OLD PAYMENTS	
March 15	\$300
Declaration Fee (for each track)	\$500

## 16.0 Investment Plan and Use of Fees

16.1 All proceeds received pursuant to §4815(b)(3)b.2.D. of Title 29 of the Delaware Code, which established in the State of Delaware a Delaware Standardbred Breeder's Program (herein "the Program") and any interest earned on these monies shall be invested in an endowment account until race year 2002.

16.2 For race year 2002, five hundred thousand dollars (\$500,000) of the proceeds received pursuant to §4815(b)(3)b.2.D. of Title 29 of the Delaware Code, which established in the State of Delaware a Delaware Standardbred Breeder's Program (herein "the Program") and any interest earned on that money in the preceding twelve (12) months shall be deposited in a separate purse account for purses and bonus for that race year. For race year 2002, one million five hundred thousand dollars (\$1,500,000) of the proceeds received pursuant to §4815(b)(3)b.2.D. of Title 29 of the Delaware Code, which established in the State of Delaware a Delaware Standardbred Breeder's Program (herein "the Program") shall be deposited in the endowment account.

16.3 For race year 2003 and each race year thereafter, one million dollars (\$1,000,000) of the proceeds received pursuant to §4815(b)(3)b.2.D. of Title 29 of the Delaware

Code, which established in the State of Delaware a Delaware Standardbred Breeder's Program (herein "the Program") and any interest earned on that money in the preceding twelve (12) months shall be deposited in a separate purse account for purses and bonus for that race year. Beginning January 1, 2003 and for each race year thereafter, one million dollars (\$1,000,000) of the proceeds received pursuant to §4815(b)(3)b.2.D. of Title 29 of the Delaware Code, which established in the State of Delaware a Delaware Standardbred Breeder's Program (herein "the Program") shall be deposited in the endowment account.

16.4 Any monies from the purse account for the Delaware Standardbred Breeder's Fund Program at the end of the race year shall revert to the endowment account of the Delaware Standardbred Breeder's Fund Program.

## DEPARTMENT OF EDUCATION

Statutory Authority: 14 Delaware Code,  
Section 122(d) (14 Del.C. 122(d))

### Educational Impact Analysis Pursuant To 14 Del.C., Section 122(d)

#### Children with Disabilities

#### A. Type of Regulatory Action Requested

Amendment to Existing Regulation

#### B. Synopsis of Subject Matter of Regulation

The Acting Secretary seeks the approval of the State Board of Education to amend certain regulations relating to Children with Disabilities in the *Regulations of the Department of Education* and to repeal Section I.G(8) "Special Programs for the Hearing Impaired", pages 55 and 56 in the *Administrative Manual: Programs for Exceptional Children*.

The Secretary proposes to amend section 2.3.2, relating to referrals from a school's instructional support team, to establish time frames for a referral from the team for an eligibility determination and for notifying parents of the referral. This proposed revision refines and clarifies the amendment to this section adopted in April 2000.

The Secretary also proposes to amend section 3.1, relating to initial evaluations. This section was initially proposed in January 2000. On the basis of comments received, the Secretary of Education declined to adopt the original proposal and the section was "reserved." The current proposal sets time frames within which districts must determine a child's eligibility for special education services. The time period does not begin to run until the district receives the parents' consent to evaluate the child. The proposed regulation accounts for eligibility determinations

occurring during summer recess by establishing alternate time frames for school days and calendar days.

The Secretary also proposes to add section 4.8 relating to the factors which must be present for an IEP team to determine a students' eligibility for services under the learning disability category. This proposed section revises the current criteria for such a determination and brings the state regulations in closer alignment to the 1997 revisions to the Individuals with Disabilities Education Act (IDEA).

Finally, the repeal of section I.G(8), "Special Programs for the Hearing Impaired," of the *AMPEC* is proposed because the role of the State Committee for the Deaf and Hard of Hearing is inconsistent with the role of the IEP team as developed in the 1997 revisions of the IDEA. The Secretary had earlier proposed continuation of the Committee, but declined to adopt that proposed regulation on the basis of public comment. This repeal of the existing regulation finalizes this change.

## C. Impact Criteria

1. Will the amended regulations help improve student achievement as measured against state achievement standards?

The amended regulations are designed to improve services for children with disabilities so that they can raise their performance on the state achievement standards.

2. Will the amended regulations help ensure that all students receive an equitable education?

The amended regulations help insure that students with disabilities have an equal opportunity for an education.

3. Will the amended regulations help to ensure that all students' health and safety are adequately protected?

The amended regulations address educational opportunity, not health and safety issues.

4. Will the amended regulations help to ensure that all students' legal rights are respected?

The amended regulations will ensure that legal rights of students with disabilities are protected.

5. Will the amended regulations preserve the necessary authority and flexibility of decision makers at the local board and school levels?

The amended regulations will preserve the necessary authority and flexibility of decision makers at the local board and school levels to the extent allowed by state and federal law.

6. Will the regulations place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels?

The amended regulations reflect the requirements of the IDEA and place only federally required reporting or

administrative requirements or mandates upon decision makers at the local board and school levels.

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity?

The decision making authority and accountability for addressing the subject to be regulated will remain in the same entity.

8. Will the regulations be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies?

The amended regulations are designed to improve services to children with disabilities and thus are consistent with the implementation of state educational policies addressing achievement in the core academic subjects.

9. Is there a less burdensome method for addressing the purpose of the regulation?

Federal legislation, i.e., the IDEA, requires that the Department of Education regulate in these areas as a condition for certain federal funding.

10. What is the cost to the state and to the local school boards of compliance with the regulations?

The amended regulations do not increase the present costs required to implement the IDEA.

## 925 Children with Disabilities

### 1.0 Adoption and Incorporation of Federal Regulations

1.1 The federal regulations adopted pursuant to the Individuals with Disabilities Act Amendments of 1997, effective May 11, 1999 and located at 34 *CFR* Parts 300 and 303, are adopted and incorporated as part of these Regulations.

1.2 These Regulations implement, complement and supplement the federal regulations and Chapter 31 of Title 14 of the *Delaware Code* (with the exception of Subchapter IV) and are designed and intended to insure compliance with applicable state and federal law. To the extent these Regulations conflict with the federal regulations, the federal regulations shall prevail.

1.3 These Regulations are arranged to correspond to the order of the federal regulations and shall be read in conjunction with the parallel provisions of the federal regulations, as illustrated by the *Administrative Manual for Special Education Services* (adopted February 2000), available at the Department of Education.

### 2.0 Identification of Children with Disabilities

2.1 Child Find: Each school district and any other public agency responsible for the education of children with disabilities shall identify, locate and evaluate or reevaluate all children with disabilities residing within the confines of that district or other public agency, including children in private schools.

2.2 Health Screening: Health, hearing, vision, and orthopedic screening shall be conducted as specified in *The Regulations of the Department of Education*, ~~800.2, 800.3, 800.4, and 800.5~~ for Health Examinations and Hearing, Vision and Orthopedic Screening.

2.3 Referral to Instructional Support Team: Referral to the school's instructional support team is a process whereby teachers enlist the help of the team to assist in the identification of potential instructional strategies or solutions for learning and behavior problems. The instructional support team process may or may not lead to referral for initial evaluation to determine eligibility and possible need for special education services. Documentation of the process should be comprehensive (including baseline and outcome data) and include strategies such as: curriculum based assessment, systematic observation, functional assessment, current health information and analyses of instructional variables.

2.3.1 Each district or other public agency shall adopt and implement procedures which provide for the referral of children to an instructional support team. All such referrals shall be specified in writing.

2.3.2 ~~Referrals for an individual child which do not contain all required documentation shall be returned to the school based instructional support team with a request for the required information. Returns may be triggered if documentation does not indicate evidence as described in the instructional support team process. These provisions shall not be used by a school district to delay the provision of an individual student evaluation when all pre-referral data are complete and the referral agent maintains that the student is in need of an individual student evaluation. When the instructional support team determines the child should be evaluated to determine eligibility and possible need for special education services, the recommendation will be forwarded to the appropriate staff member within 10 school days. The parent shall be notified within 10 days of the determination by the instructional support team that a child should be evaluated to determine eligibility and need for special education services. The notification shall include a request for parental consent for initial evaluation, which complies with section 300.505 of the federal regulations (see Procedural Safeguards, section 14.0). Referrals for an individual child that do not contain all required documentation, including the evidence as described in 2.3, may be returned to the instructional support team with a request for the required information.~~

2.3.3 A parent may initiate a referral at any time for

an initial evaluation to determine whether or not there is a need for special education services.

### 3.0 Procedures for Evaluation and Determination of Eligibility

3.1 ~~Reserved—Initial Evaluation~~ Initial evaluation: Informed written parental consent shall be obtained before conducting an initial evaluation and the meeting to determine eligibility shall occur within 45 school days, or 90 calendar days whichever is shorter, of the receipt of consent for the initial evaluation, unless additional time is agreed upon.

#### 3.2 Evaluation Procedures

##### 3.2.1 Qualified Evaluation Specialists

3.2.1.1 A qualified evaluation specialist is a person who has met State approval or recognized certification, licensing, registration, or other comparable requirements which apply to the area in which he or she is providing student evaluation services.

3.2.2 Eligibility decisions may include (1) historical information and (2) evaluation data which are no more than two years old.

3.2.3 Each initial evaluation shall be completed in a manner which precludes undue delay in the evaluation of students.

3.2.4 The Evaluation Report shall document the IEP team's discussion of the eligibility determination including, where appropriate, the additional requirements for students with a learning disability.

#### 3.3 Procedures for Determining Eligibility and Placement

3.3.1 Children who have an articulation impairment as their only presenting disability may not need a complete battery of assessments. However, a qualified speech-language pathologist shall evaluate each child who has a speech or language impairment using procedures that are appropriate for the diagnosis and appraisal of speech and language impairments.

3.3.2 Written Report: The Evaluation Report shall document the IEP team's discussion of the child's continued eligibility, including, where appropriate, the additional requirements for students with a learning disability.

3.3.3 Cognitive Ability: For cases in which continued eligibility for special education services is dependent upon level of cognitive ability or discrepancies between ability and achievement such as learning disability and mental disability, the IEP team shall ensure that the eligibility decision is based on reliable and valid individual assessment data. For children identified prior to age 7, a second individual evaluation shall occur after the child's 7th birthday, and be at least one year apart from the earlier evaluation. The results of these two evaluations shall lead to substantially similar conclusions about the child's level of cognitive ability or discrepancy between ability and

achievement, if applicable.

3.3.4 Delaware Student Testing Program Participation: The IEP team shall determine the participation of a child with a disability in the Delaware Student Testing Program in conformity with the guidelines set forth in the Delaware Student Testing Program, Guidelines for the Inclusion of Students with Disabilities and Students with Limited English Proficiency.

#### 4.0 Eligibility for Services

4.1 Age of Eligibility: Programs shall be provided for children with disabilities in age ranges as set out in accordance with Chapters 31 and 17 of Title 14 of the *Delaware Code* and other age ranges as provided for by State and/or federal legislation.

4.1.1 The age of eligibility for special education and related services for children identified as having a hearing impairment, visual impairment, deaf-blindness, or autism, shall be from birth through 20 years, inclusive.

4.1.2 The age of eligibility for children identified as having preschool speech delay shall be from the third birthday up to, but not including, the fifth birthday.

4.1.3 The age of eligibility for children identified as having speech and/or language impairment shall be from the fifth birthday through twenty years, inclusive; provided, however, that children attaining the minimum age by August 31 of the school year shall also be eligible. These children receive a free appropriate public education as preschool speech delayed upon reaching their third birthday.

4.1.4 The age of eligibility for children identified as having a developmental delay shall be from the third birthday up to, but not including, the fourth birthday.

4.1.5 The age of eligibility for children identified as having a physical impairment, trainable mental disability, traumatic brain injury, or severe mental disability shall be from the third birthday through 20 years inclusive; provided, however, that students in these categories attaining the minimum age by August 31 of the school year shall also be eligible.

4.1.6 The age of eligibility for children identified as having emotional disturbance, educable mental disability, or learning disability shall be from the fourth birthday through 20 years inclusive; provided, however, that children in these categories attaining the minimum age by August 31 of the school year shall also be eligible. These children receive a free appropriate public education as developmentally delayed upon reaching their third birthday.

4.1.7 Children in special education who attain age 21 after August 31 may continue their placement until the end of the school year including appropriate summer services through August 31.

#### 4.2 Definitions and General Eligibility/Exit Criteria

4.2.1 Eligibility Criteria - General: A child shall be considered eligible to receive special education and related

services, and to be counted in the appropriate section of the unit funding system noted in 14 *Delaware Code*, Ch. 17, Section 1703, when such eligibility and the nature of the disabling condition are determined by an IEP team. Eligibility and the nature of the condition shall be based upon consideration of the results of individual child evaluation data obtained from reports and observations and the definitions and criteria delineated in these regulations. Eligibility for classification under any one or more categories shall include documentation of the educational impact of the disability. Documentation of eligibility shall include an evaluation report from a qualified evaluation specialist. Eligibility for classification under any one or more categories shall include, but shall not be limited to, an evaluation report from the evaluation specialist designated under the eligibility criteria for each disability.

4.2.2 Exit Criteria - General: A child ceases to be eligible for special education and related services when the IEP team determines that special education is no longer needed for the child to benefit from his or her educational program or the child graduates with a high school diploma. In making the determination, the team shall consider:

4.2.2.1 Eligibility criteria;

4.2.2.2 Data-based and/or documented measures of educational progress; and

4.2.2.3 Other relevant information

4.3 Eligibility Criteria for Autism: An IEP team shall review evidence for the following behavioral manifestations:

4.3.1 The presence of an impairment of verbal and nonverbal communication skills including the absence of speech or the presence of unusual speech features, and a combination of the following:

4.3.1.1 Impairment in reciprocal social orientation/interaction;

4.3.1.2 Extreme resistance to change and/or control;

4.3.1.3 Preoccupation with objects and/or inappropriate use of objects; and/or

4.3.1.4 Unusual motor patterns, including, but not limited to, self-stimulation and self-injurious behavior.

4.3.2 Identification of autism shall be documented through an evaluation by either a licensed psychologist, a certified school psychologist, a qualified physician, or a qualified psychiatrist. Determination of the condition of autism and eligibility for special education shall be made by an IEP team.

4.3.3 Age of Eligibility: The age of eligibility for children identified under this definition shall be from birth through 20 years, inclusive.

4.4 Eligibility Criteria for Developmental Delay: A developmental delay is a term applied to a young child, who exhibits a significant delay in one or more of the following developmental domains: cognitive, communication (expressive and/or receptive), physical (gross motor and/or

fine motor), social/emotional functioning, and adaptive behavior. A developmental delay shall not be primarily the result of a significant visual or hearing impairment.

4.4.1 In order for an IEP team to determine eligibility for special education services, under the Developmental Delay category, the following is required:

4.4.1.1 Standardized test scores of 1.5 or more standard deviations below the mean in two or more of the following developmental domains: cognitive, communication (expressive and/or receptive), physical (gross and/or fine), social/emotional functioning or adaptive behavior; or

4.4.1.2 Standardized test scores of 2.0 or more standard deviations below the mean in any one of the developmental domains listed above; or

4.4.1.3 Professional judgment of the IEP team that is based on the multiple sources of information used in the assessment process and with justification documented in writing in the evaluation report.

4.4.2 Age of Eligibility: The age of eligibility for classification under the developmental delay classification is from the third birth date until the fourth birth date.

4.5 Eligibility Criteria for Deaf Blind: An IEP team shall consider the following in making a determination that a child has a deaf-blind condition:

4.5.1 A qualified physician or licensed audiologist shall document that a child has a hearing loss so severe that he or she cannot effectively process linguistic information through hearing, with or without the use of a hearing aid. Such documentation shall be based upon a formal observation or procedure; and a licensed ophthalmologist or optometrist shall document that a child has a best, corrected visual acuity of 20/200 or less in the better eye, or a peripheral field so contracted that the widest lateral field of vision subtends less than 20 degrees; and

4.5.2 An IEP team shall consider the documentation of auditory and visual impairment in addition to other information relevant to the child's condition in determining eligibility for special education under the above definition.

4.5.3 Classification as a child who is deaf-blind shall be made by the IEP team after consideration of the above eligibility criteria.

4.5.4 Age of Eligibility: The age of eligibility for children identified under this definition shall be from birth through 20 years, inclusive.

4.6 Eligibility Criteria for Emotional Disturbance: The IEP team shall consider documentation of the manifestation of the clusters or patterns of behavior associated with emotional disturbance and documentation from multiple assessment procedures. Such procedures shall include, but not be limited to, an evaluation by either a licensed or certified school psychologist, or a licensed psychiatrist, classroom observations by teacher(s) and at least one other

member of the IEP team, a review of records, standardized rating scales, and child interviews.

4.6.1 The documentation shall show that the identified behaviors have existed over a long period of time and to a marked degree; and

4.6.2 Adversely affect educational performance. This means that the child's emotions and behaviors directly interfere with educational performance. It also means that such interference cannot primarily be explained by intellectual, sensory, cultural, or health factors, or by substance abuse; and

4.6.2.1 Are situationally inappropriate for the child's age. This refers to recurrent behaviors that clearly deviate from behaviors normally expected of other students of similar age under similar circumstances. That is, the student's characteristic behaviors are sufficiently distinct from those of his or her peer groups; or

4.6.2.2 Preclude personal adjustment or the establishment and maintenance of interpersonal relationships. This means that the child exhibits a general pervasive mood of unhappiness or depression and/or is unable to enter into age-appropriate relationships with peers, teachers and others; and

4.6.3 The age of eligibility for children identified under this definition shall be from the fourth birthday through 20 years, inclusive.

4.7 Eligibility Criteria for Hearing Impairment

4.7.1 A qualified physician or licensed audiologist shall document that a child has a hearing loss such that it makes difficult or impossible the processing of linguistic information through hearing, with or without amplification. Such documentation shall be based upon a formal observation or procedure; and

4.7.2 The IEP team shall consider the documentation of hearing impairment in addition to other information relevant to the child's condition in determining eligibility for special education under the above definition.

4.7.3 The age of eligibility of children identified under this definition shall be from birth through 20 years, inclusive.

~~4.8 Reserved — Eligibility Criteria for Learning Disability~~ Eligibility Criteria for Learning Disability: In order for an IEP team to determine eligibility for special education services under the learning disability category, the following is required:

4.8.1 Written document for the formative intervention process used with the student. The documentation shall include a clear statement of the student's presenting problem(s); summary of diagnostic data collected and the sources of that data; and summary of interventions implemented to resolve the presenting problem(s) and the effects of the interventions; and

4.8.2 A comprehensive psychological assessment to evaluate the student's reasoning and cognitive processes

in order to rule out mental retardation and emotional disturbance, and

4.8.3 A severe discrepancy between achievement and intellectual ability in one or more of the following areas: oral expression, listening comprehension, written expression, basic reading skills, reading comprehension, mathematics calculation or mathematics reasoning, based on correlation tables approved by the Department of Education.

4.8.4 The age of eligibility for students identified under this definition shall be from the fourth birthday through 20 years inclusive.

4.9 Mental Disability: The degree of mental disability is defined as follows: Educable Mental Disability (EMD) - I.Q. 50-70, +5 points; Trainable Mental Disability (TMD) - I.Q. 35-50, +5 points; Severe Mental Disability (SMD) - I.Q. below 35.

4.9.1 Eligibility Criteria for Mental Disability: The IEP team shall consider both the level of intellectual functioning and effectiveness of adaptive behavior, as measured by a licensed or certified school psychologist, in determining that a child has a mental disability and the degree of mental disability.

4.9.2 The age of eligibility for children identified under the TMD, and SMD definition shall be from the third birthday through 20 years, inclusive. Children identified under the EMD definition shall be from the fourth birthday through 20 years inclusive. These children may be served at age 3 as having a developmental delay.

4.10 Eligibility Criteria for Physical Impairments: Eligibility criteria for physical impairments include examples of orthopedic disabilities, but are not limited to: traumatic brain injury, cerebral palsy, muscular dystrophy, spina bifida, juvenile rheumatoid arthritis, amputation, arthrogryposis, or contractures caused by fractures or burns. Examples of health impairments include, but are not limited to: cancer, burns, asthma, heart conditions, sickle cell anemia, hemophilia, epilepsy, HIV/AIDS or medical fragility.

4.10.1 A qualified physician shall document that a child has a physical impairment in order to be considered for special education and related services under the above definition.

4.10.2 The IEP team shall consider the child's need for special education and related services if the physical impairment substantially limits one or more major activities of daily living and the student has:

4.10.2.1 Muscular or neuromuscular disability(ies) which significantly limit(s) the ability to communicate, move about, sit or manipulate the materials required for learning; or

4.10.2.2 Skeletal deformities or other abnormalities which affect ambulation, posture and/or body use necessary for performing school work; or

4.10.2.3 Similar disabilities which result in

reduced efficiency in school work because of temporary or chronic lack of strength, vitality, or alertness.

4.10.3 Determination by the IEP team of eligibility for services shall be based upon data obtained from:

4.10.3.1 Medical records documenting the physical impairment are required, and current medical prescriptions such as O.T./P.T., medication, catheterization, tube feeding shall be included if available;

4.10.3.2 Results from specialist team screening using appropriate measures which identify educational and related service needs, as well as environmental adjustments necessary. The team shall include, but not necessarily be limited to, an educator and physical or occupational therapist; and

4.10.3.3 Prior program or school records if available; and when determined necessary, a speech/language evaluation, adaptive behavior scale, vision or hearing screening, social history, and/or psychological evaluation.

4.10.4 Age of Eligibility: The age of eligibility for children under this definition shall be from the third birthday through 20 years, inclusive.

4.11 Speech and/or Language Impairment Eligibility Criteria: In determining eligibility under the Speech and/or Language classification, the IEP team shall consider the results of an evaluation conducted by a licensed Speech-Language Pathologist which identifies one or more of the following conditions: an articulation disorder, a language disorder, dysfluent speech; and/or a voice disorder.

4.11.1 The age of eligibility for children identified under this definition shall be from the fifth birthday through 20 years, inclusive, except where speech and/or language therapy is provided as a related service. In the latter instance, the age of eligibility shall correspond with that of the identified primary disability condition.

4.12 Eligibility Criteria for Traumatic Brain Injury: A qualified physician must document that a child has a traumatic brain injury in order to be considered for special education and related services under the above definition.

4.12.1 The IEP team shall consider the child's need for special education and related services if the traumatic brain injury substantially limits one or more major activities of daily living.

4.12.2 The age of eligibility for children under this definition shall be from the third birthday through 20 years, inclusive.

4.13 Visual Impairment Eligibility Criteria

4.13.1 Legally Blind shall be defined as a visual acuity of 20/200 or less in the better eye with best correction, or a peripheral field so contracted that the widest diameter of such field subtends less than 20 degrees.

4.13.2 Partially Sighted shall be defined as a visual acuity between 20/70 and 20/200 in the better eye after best correction, or a disease of the eye or visual system that



seriously affects visual function directly, not perceptually. A visual impairment may be accompanied by one or more additional disabilities, but does not include visual-perceptual or visual-motor dysfunction resulting solely from a learning disability.

4.13.3 A licensed ophthalmologist or optometrist shall document that a child has a best, corrected visual acuity of 20/200 or less in the better eye, or a peripheral field so contracted that the widest diameter of such field subtends less than 20 degrees, legally blind, or a visual acuity of 20/70 or less in the better eye after all correction, partially sighted.

4.13.4 The IEP team shall consider the documentation of visual impairment in addition to other information relevant to the child's condition in determining eligibility for special education under the above definition.

4.13.5 The age of eligibility for children identified under this definition shall be from birth through 20 years, inclusive.

4.14 Eligibility Criteria for Preschool Speech Delay (3 and 4 year olds only)

4.14.1 A speech disability is defined as a communication disorder/delay involving articulation, voice quality, and/or speech fluency to such a degree that it interferes with a child's overall communicative performance.

4.14.2 In order to determine a significant delay or disorder in this area, the child shall receive a speech and language evaluation conducted by a licensed Speech and Language Pathologist.

4.14.2.1 A speech and language evaluation shall include assessment of articulation, receptive language and expressive language as measured by a standardized/norm-based instrument. It is strongly recommended that the evaluation include clinical observations and/or an assessment of oral motor functioning, voice quality and speech fluency. Results of the evaluation may identify a significant delay or disorder in one or more of the following areas:

4.14.2.1.1 articulation errors of sounds that are considered to be developmentally appropriate for the child's age as measured by an articulation test,

4.14.2.1.2 conversational speech that is not developmentally appropriate for the child's age as measured by a speech and language pathologist,

4.14.2.1.3 oral motor involvement which may affect the development of normal articulation,

4.14.2.1.4 Speech Fluency, or

4.14.2.1.5 Voice Quality

4.14.3 Results of the evaluation may indicate a significant delay in receptive and/or expressive language which warrants further evaluation. In this event, the child is to be referred for a multidisciplinary evaluation to determine if he/she meets the eligibility criteria for developmental delay.

4.14.4 The age of eligibility for preschool children identified under this definition shall be from the third birth date until the fifth birth date.

5.0 Individualized Education Program (IEP): An IEP shall be developed prior to delivery of services and within thirty (30) calendar days following the determination that a child is eligible for special education and related services.

5.1 Transition Between Grades or Levels: During the annual review, the IEP team shall consider the needs of the child with a disability who is scheduled for a move. Communication with the staff of the receiving program shall occur to ensure that a child's transition between grades or levels does not endanger his/her receipt of a free appropriate public education.

5.2 IEP of Transferring Students with Disabilities

5.2.1 A child with a disability who transfers from one school district or other public agency educational program to another must be temporarily placed in an educational setting which appears to be most suited to the child's needs based on a decision mutually agreed upon by the parents and representative of the receiving school district or other public agency.

5.2.2 The request for, and the forwarding of, records shall be in accordance with 29 Delaware Code, Chapter 5.

5.2.3 A child's IEP from the sending school district or other public agency may be acceptable for temporary provision of special education services. The agreement shall be documented by the signatures of a parent and the receiving principal on a temporary placement form or the cover page of the IEP.

5.2.4 A review of the IEP shall be instituted and completed within thirty (30) calendar days from the date of initial attendance of the child in the receiving agency, and sixty (60) calendar days for students transferring from out-of-state schools. The receiving school is responsible for ensuring that all requirements concerning evaluation, IEP development, placement, and procedural safeguards shall be applied in determining the provision of special education and related services for transferring children.

5.3 IEP Team: Participants at an IEP meeting shall be collectively identified as the IEP Team.

5.3.1 The agency representative must have the authority to commit agency resources and be able to ensure that whatever services are set out in the IEP will actually be provided.

5.3.2 The district shall notify parents of the IEP meeting no less than ten (10) business days prior to the meeting (unless mutually agreed otherwise) to ensure that they have the opportunity to attend, and no less than three (3) business days for removal due to disciplinary action. See 12.0 Disciplinary Procedures.

5.4 Content of the Individualized Education Program:

Each child who is determined to be eligible for special education and related services shall have a single IEP.

5.4.1 The IEP shall designate whether or not it is necessary to place the child who is transported from school by bus into the charge of a parent or other authorized responsible person.

5.4.2 By the middle of the eighth grade, the IEP shall include plans to determine the child's interests/preferences, and to make application to high school and vocational education programs. Full transition services planning will apply by the end of the ninth grade or prior to the child's 15th birthday, whichever comes first, unless determined appropriate at a younger age by the IEP Team.

5.5 Monitoring IEPs: As part of the on-going responsibility for the monitoring and evaluation of programs to determine compliance with state and federal requirements, the school district and/or other public agency shall review the IEPs of children with disabilities to determine that their content is consistent with requirements of these regulations. Documentation of monitoring efforts shall be maintained by the school district and/or other public agencies.

5.6 Need for Extended School Year Services: Full consideration must be given to the educational needs of each child. The following factors are to be considered by the IEP team in making a decision that, without extended school year services over the summer months, the child would not receive a free appropriate public education (FAPE) during the regular school year.

5.6.1 Degree of Impairment: The team should determine whether, without extended school year services, appropriate and meaningful progress on IEP goals and objectives will not be achieved, given the nature and/or severity of the child's disability.

5.6.2 Regression/recoupment: Regression refers to a decline in skills specified on the IEP which results from an interruption in programming. Recoupment period is the amount of time required to relearn the skills following the interruption. In making a determination as to whether extended school year services are required, the team should consider that this criterion focuses on students who have a consistent pattern of substantial regression in critical skill areas and for whom the amount of time needed to relearn the skills becomes so significant as to preclude educational progress. The team may utilize predictive data for children in their initial year of programming.

5.6.3 Breakthrough opportunities: The team should determine whether, without extended school year services, the attainment of a nearly acquired critical skill would be significantly jeopardized over the summer break.

5.6.4 Vocational: For children ages 16-20 whose IEPs contain vocational/employment goals and objectives, the team should determine whether paid employment opportunities will be significantly jeopardized if training and job coaching are not provided during the summer break.

5.6.5 Other rare and unusual extenuating circumstances: The team should determine whether any special or extenuating circumstances exist which justify provision of extended school year services to meet FAPE requirements.

5.6.6 Extended school year services are to be based on needs and goals/objectives found within the child's IEP of the school year, though activities may be different.

5.6.7 This regulation does not diminish a child's entitlement to participate, with or without accommodations, in summer school programs provided by local school districts. Normally scheduled summer school programs may be an option for providing extended school year services if such programs can meet the individual needs of each child, per his/her IEP.

5.6.8 The decision of the setting for the delivery of extended school year services shall be an IEP team decision. The team shall document that the Least Restrictive Environment (LRE) was considered in making a decision. Districts are not required to establish school programs for non-disabled students for the sole purpose of satisfying the LRE requirements for students receiving extended school year services.

5.6.9 Transportation shall be provided to students except for service provided in the home or hospital. Mileage reimbursement to the family may be used as a transportation option if the parent voluntarily transports the student.

5.6.10 Written notice shall be provided to parents advising them that extended school year services will be discussed at the IEP meeting. The IEP team shall document that extended school year services were considered, and indicate the basis for a decision on the IEP. In cases where parents do not attend the IEP meeting, they would be advised of the decision on extended school year services through the usual IEP follow-up procedures used by the district.

5.6.11 In cases where parents do not agree with the decision on extended school year services, the use of normal procedural safeguards shall be followed. The process shall begin early enough to ensure settlement of the issue prior to the end of the school year.

6.0 Least Restrictive Environment is operationalized in terms of the degree of interaction between children with and without disabilities. The decision about placement within the least restrictive environment is made following the writing of the IEP and is directly related to the child's needs and identified services documented in the IEP. Settings in which services can be provided include:

6.1 Regulation Education Class: Children with disabilities receive special education and related services outside the regular classroom for less than 21 percent of the school day. This may include children with disabilities placed in:

6.1.1 regular class with special education/ related services provided within regular classes,

6.1.2 regular class with instruction within the regular class and with special education/related services provided outside regular classes, or

6.1.3 regular class with special education services provided in resource rooms.

6.2 Resource Class: Children with disabilities receiving special education and related services outside the regular classroom for at least 21 percent but no more than 60 percent of the school day. This may include children and youth placed in:

6.2.1 resource rooms with special education/ related services provided within the resource room, or

6.2.2 resource rooms with part-time instruction in a regular class.

6.3 Self-Contained Class: Children with disabilities receiving special education and related services outside the regular classroom for more than 60 percent of the school day. This does not include children who received education programs in public or private separate day or residential facilities. This may include children and youth placed in:

6.3.1 self-contained special classrooms with part-time instruction in a regular class.

6.3.2 self-contained special classrooms with full-time special education instruction on a regular school campus.

6.4 Public Separate Day School: Children with disabilities receive special education and related services for greater than 50 percent of the school day in public separate facilities. This may include children and youth placed in:

6.4.1 public day schools for children with disabilities, or

6.4.2 public day schools for children with disabilities for a portion of the school day (greater than 50 percent) and in regular school buildings for the remainder of the school day.

6.5 Private Separate Day School: Children with disabilities receive special education and related services, at public expense, for greater than 50 percent of the school day in private separate facilities. This may include children and youth placed in private day schools for students with disabilities.

6.6 Public Residential Placement: Children with disabilities receiving special education and related services for greater than 50 percent of the school day in public residential facilities. This may include children and youth placed in

6.6.1 public residential schools for children with disabilities, or

6.6.2 public residential schools for children with disabilities for a portion of the school day (greater than 50 percent) and in separate day schools or regular school buildings for the remainder of the school day.

6.7 Private Residential Facilities: Children with disabilities receive special education and related services, at public expense, for greater than 50 percent of the school day in private residential facilities. This may include children and youth placed in:

6.7.1 private residential schools for children with disabilities, or

6.7.2 private residential schools for students with disabilities for a portion of the school day (greater than 50 percent) and in separate day schools or regular school buildings for the remainder of the school day.

6.8 Homebound/Hospital Placement: Supportive Instruction (Homebound Instruction) is supportive instruction in an alternative program provided at home, hospital or related site for children suffering from an illness or injury. For other disabled children it may be the level of service which assures a free, appropriate public education.

6.8.1 Where the child with a disability is a danger to himself or to herself, or is so disruptive that his or her behavior substantially interferes with the learning of other students in the class, the IEP team may provide the child with supportive instruction and related services at home in lieu of the child's present educational placement.

6.8.2 Services provided under these conditions shall be considered a change in placement on an emergency basis and shall require IEP team documentation that such placement is both necessary and temporary and is consistent with requirements for the provision of a free, appropriate public education.

6.8.3 In instances of parental objection to such home instruction, due process provisions apply.

6.8.4 To be eligible for supportive instruction and related services, the following criteria shall be met:

6.8.4.1 The child shall be identified as disabled and in need of special education and/or related services and enrolled in the school district or other public educational program; and

6.8.4.2 If absence is due to medical condition, be documented by a physician's statement where absence will be for two weeks or longer; or

6.8.4.3 If absence is due to severe adjustment problem, be documented by an IEP team that includes a licensed or certified school psychologist or psychiatrist, and that such placement is both necessary and temporary; or if for transitional in-school program, be documented by the IEP team that it is necessary for an orderly return to the educational program.

6.8.5 IEPs specifying supportive instruction services shall be reviewed at intervals determined by the IEP team, sufficient to ensure appropriateness of instruction and continued placement.

6.8.6 Supportive instruction, related services and necessary materials shall be made available as soon as possible, but in no case longer than 30 days following the

IEP meeting. Such instruction and related services may continue upon return to school when it is determined by the IEP team that the child needs a transitional program to facilitate his or her return to the school program.

6.9 Least Restrictive Environment Placement Decisions: The school district shall ensure that when a child with a disability is placed, a chronologically age-appropriate placement is provided.

6.9.1 An educational placement deemed appropriate by a child's IEP team shall not be denied merely because of the category of the child's disability, configuration of the existing service/support delivery system, availability of educational or related services, availability of space, or curriculum content or methods of curriculum delivery.

6.9.2 A change in placement requiring an IEP team meeting occurs when the district proposes to initiate or change the placement of the child. This includes a change in:

6.9.2.1 The amount of time of regular, special education and/or related services; or

6.9.2.2 The settings as identified in 6.1 – 6.8 above.

6.9.3 A change of placement does not include a change of teachers when the same services are being provided, a change in the scheduled of service delivery, or routine movement within a feeder pattern, i.e., grade level changes.

7.0 Vocational Education: When appropriate to individual needs of the children, as determined by the IEP team, each school district or other public agency responsible for the education of a child with a disability shall provide vocational education programs for such children in the Least Restrictive Environment.

7.1 Children with disabilities will be provided with equal access to recruitment, enrollment and placement activities.

7.2 Children with disabilities will be provided with equal access to the full range of vocational programs available to all students including occupational specific courses of study, cooperative education, apprenticeship programs and to the extent practicable, comprehensive career guidance and counseling services.

7.3 In addition to the vocational program, each school district or other public agency shall ensure the following supplementary services are provided to children with disabilities:

7.3.1 Codification of curriculum, equipment and facilities as needed;

7.3.2 Supportive personnel;

7.3.3 Instructional aids and devices;

7.3.4 Guidance, counseling and career development staff who are associated with the provision of

such special services;

7.3.5 Counseling services designed to facilitate the transition from school to post-school employment and career opportunities. Carl D. Perkins Vocational & Technical Education Act of 1998.

7.3.6 Regular vocational programs with supportive services as identified by the IEP team; and

7.3.7 Special education vocational programs.

7.4 Each school district or other public agency must provide assurances that they will assist in fulfilling the transitional service requirement as defined in Individuals with Disabilities Education Act (IDEA).

7.5 Each school district or other public agency shall ensure the provision of an appropriate vocational education, including access to Career Pathways, as determined by the IEP team through the availability of a continuum of vocational education placements. The continuum of placements includes, but is not limited to:

7.5.1 Regular vocational programs with no supportive services;

7.5.2 Regular vocational programs with supportive services as identified by the IEP team;

7.5.3 Special education vocational programs;

7.5.4 Self-contained vocational programs; and

7.5.5 Community based job training programs.

8.0 Facilities, Equipment and Materials: All facilities which house programs for children with disabilities must meet the standards approved by the State Board of Education with regard to space, health, fire, safety, and barrier-free regulations.

8.1 All instructional or treatment programs for children with disabilities shall provide appropriate materials and equipment for implementation of individualized education programs.

9.0 Length of School Day: The minimum length of the instructional school day for a child with a disability in Kindergarten through grade twelve shall be the same as it is for non-disabled children in those grades. The minimum length of the school day for disabled pre-Kindergarten children shall approximate that of non-disabled pre-Kindergarten children, except in a program for the hearing impaired in which the parent is involved in the educational program. In such a program, the school and the parent together shall determine the schedule for the five (5) hours per week minimum instruction. Provision of fewer hours of instructional time than required by the above standards is authorized only in unusual circumstances where a child is medically unable to endure the required length of school day, and then only by IEP committee decision after disclosure of the above standards to the child's parents/guardian.

10.0 Compulsory Attendance: Compulsory attendance will be in accordance with 14 *Del. C.*, Section 2703 and 2706, and shall apply to students with disabilities between the ages of 5 and 16. Attendance of children with disabilities under or over the compulsory school attendance age range, 14 *Del. C.*, Section 2702, shall be determined by the IEP conference and subject to the eligibility criteria and appeal procedures provided in these rules and regulations by the Department of Education.

11.0 Transportation: Transportation of all children to and from school is provided under 14 *Del. C.*, Ch. 29, and when special transportation needs are indicated in a child's IEP, transportation becomes a "related service."

11.1 Travel to and from school and between schools, including required specialized equipment, shall be at State expense when such travel and/or specialized equipment requirements are specified on the child's IEP and it is necessary for the implementation of the child's IEP; and

11.2 Travel arrangements are to be made in consultation with the local transportation representative when unusual requirements are indicated.

11.3 Transportation provided to accommodate a related service shall be at local school district or other public agency expense. Transportation incidental to the disabled child's educational program shall not be at State expense, including, but not limited to work study arrangements; cooperative work arrangements; and extracurricular activities.

## 12.0 Discipline Procedures

12.1 Documentation, including the reasons for the action, must be made for any removal for more than 10 days. In addition to the removals identified in CFR Section 300.519, the following removals shall constitute a change in placement:

12.1.1 in-school removals for more than 10 days. If it deprives a child from (1) meeting the goals set out in the IEP, (2) progressing in the general curriculum - though in another setting, and (3) receiving those services and modifications described in the IEP; and

12.1.2 removals from transportation, if it results in the child's absence from school for more than 10 days.

### 12.2 Expedited Due Process Hearings

12.2.1 An expedited due process hearing shall be conducted by a single, impartial hearing officer appointed by the Department of Education from the attorney members of its Registry of Impartial Hearing Officers, and shall result in a decision within 45 days of the receipt of the request for a hearing.

12.2.2 Procedural rules for an expedited due process hearing shall differ from those for a regular due process hearing as follows:

12.2.2.1 Any party to a hearing has the right to prohibit the introduction of any evidence at the hearing that

has not been disclosed to that party at least two (2) business days before the hearing.

12.2.2.2 At least two (2) business days prior to the hearing, each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing.

12.2.2.2.1 The hearing officer may bar any party that fails to comply with this subsection from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

12.3 Corporal Punishment: Prior to any proposed administration of corporal punishment to a child with a disability, a determination by the child's IEP team shall be made as to whether or not the misconduct prompting the proposed corporal punishment is related to, or a manifestation of, the child's disability.

12.3.1 The misconduct is related to, or a manifestation of, the child's disability, any discipline shall be in accordance with the child's IEP.

12.3.2 The misconduct is not related to, or a manifestation of the child's disability, corporal punishment may be administered in accordance with the same State and other provisions as applied to non-disabled children in the school district or other public agency.

12.4 Written Notice: The school district or other public agency shall ensure that the parents/guardian of each child with disabilities receive written notice of the rules and regulations applicable to such children with respect to discipline, suspension, expulsion, exclusion as a treatment procedure, and corporal punishment at the beginning of each school year or upon entry into a special education program during the school year.

13.0 Educational Surrogate Parent: An "Educational Surrogate Parent", hereinafter referred to as "Surrogate Parent", is defined as an individual appointed to represent a child who receives, or may be in need of, special education in all educational decision-making pertaining to the identification, evaluation, and educational placement of the student and the provision of a free appropriate public education to the child.

13.1 A surrogate parent shall be appointed by the Department of Education to represent a child in all matters pertaining to the identification, evaluation, educational placement and the provision of a free appropriate public education when any one of the following situations exist:

13.1.1 a parent cannot be identified;

13.1.2 after reasonable efforts, the whereabouts of the parent cannot be discovered. Reasonable efforts include, but are not limited to, telephone calls, letters, certified letter with return receipt or visit to the parents' last known address;

13.1.3 parental rights have been terminated, and legal responsibility has not been granted by a court of law to

an individual, not to include a state agency, and the child has not been adopted; or

13.1.4 the child's parent has consented voluntarily, in writing, to the appointment of an educational surrogate parent. Such consent is revocable by the parent at any time by written notice to the Department of Education.

13.2 A surrogate parent is not required for a child who receives, or may be in need of, special education when the child is living in the home of a relative who agrees to act in the place of the parent.

13.3 An otherwise eligible child between the ages of 18 and 21 shall continue to be entitled to the services of a surrogate parent. Such child, however, who has not been declared incompetent by a court of law retains the right to make his/her own educational decisions. This right to make decisions is extended to include:

13.3.1 the right of access to a surrogate parent who shall act as an advisor to the student;

13.3.2 the right to refuse the appointment of a surrogate parent;

13.3.3 the right to participate in the selection of a surrogate parent; and

13.3.4 the right to terminate the services of a duly appointed surrogate parent.

13.3.5 To exercise any of the above rights, the child shall, upon notification of eligibility for services of a surrogate parent, declare his/her intentions in writing.

13.4 Nomination and Candidacy of Surrogate Parent: The Department of Education shall be notified in writing of the names of potential surrogate parents by anyone having knowledge of the person's willingness to serve.

13.5 Screening of Potential Surrogate Parents: Each potential surrogate parent shall be screened by the Department of Education, in consultation with school districts, to determine that he/she meets candidacy requirements.

13.6 To serve as a surrogate parent, each candidate shall:

13.6.1 be at least 18 years of age;

13.6.2 be a legal resident of the United States;

13.6.3 be competent to represent the child;

13.6.4 not be an employee of a district or other public or private agency responsible for, or involved in, the education or care of the child (a person is not an employee of a district or agency solely because he/she is paid by the district or agency to serve as a surrogate parent). Foster parents are not considered employees for purposes of this requirement.

13.6.5 have no interest that conflicts with the interest of the child he/she may represent (such determination is made on a case-by-case basis). In general, a person would have a conflict of interest if she/he were in a position that might restrict or bias his/her ability to advocate for all of the services required to ensure a free appropriate

public education for the child.

13.6.6 receive instruction about State and federal laws and regulations, due process procedures, disability conditions and the availability of programs and services for students with disabilities, as provided by the Department of Education; and

13.6.7 be able to converse in the primary communication mode used by the child, whenever possible.

13.7 Training for Surrogate Parents: Initial training for surrogate parents shall be provided by the Department of Education. Such training sessions shall be conducted at least annually.

13.7.1 The Department of Education shall issue a Certificate of Training to qualified persons who complete the required surrogate parent training.

13.7.2 The Department of Education shall notify districts and the Department of Services for Children, Youth and Their Families of persons who are certified as surrogate parents.

13.7.3 Follow-up training shall be provided by the Department of Education.

13.8 Appointment of Surrogate Parents: Each district shall be responsible for having procedures to locate and refer eligible children. Any person or entity, however, may identify a child believed to require a surrogate parent. Referral shall be made on the designated form to the Department of Education with a copy sent to the supervisor of special education in the district in which the child will receive or is receiving special education.

13.8.1 The Department of Education shall determine the child's eligibility for a surrogate parent.

13.8.2 The Department of Education staff person responsible for surrogate parents or his/her designee shall recommend to the Department of Education a certified surrogate parent to represent the student after consultation, as appropriate, with the local school district regarding the match of the surrogate parent to a particular child.

13.8.3 The Department of Education shall notify, in writing, the district and/or referring agency/person of the appointment.

13.8.4 A person may be appointed to serve as a surrogate parent for more than one child to the extent that such appointment is consistent with effective representation of the children. In no event shall one person be appointed as a surrogate parent for more than four children.

13.9 Responsibilities of Surrogate Parent: Each person assigned as a surrogate parent shall represent the child in all education decision-making processes concerning that child by:

13.9.1 becoming thoroughly acquainted with the child's educational history and other information contained in school records and reports relating to the child's educational needs;

13.9.2 granting or denying permission for initial

evaluation or placement, and safeguarding the confidentiality of all records and information pertaining to the child to comply with State and federal regulations, including the use of discretion when sharing information with appropriate people for the purpose of furthering the interests of the child;

13.9.3 participating in the development of an IEP for the child;

13.9.4 reviewing and evaluating special education programs pertaining to the child and other such programs as may be available;

13.9.5 initiating mediation, complaint, hearing, or appeal procedures when necessary regarding the identification, evaluation, or educational placement of the child, and seeking qualified legal assistance when such assistance is in the best interest of the child; and

13.9.6 taking part in training provided to become familiar with the State and federal laws and regulations, due process procedures regarding the education of children with disabilities, information about disabilities, and the availability of programs and services for such children.

13.10 The term of service of the surrogate parent shall be the length of time which the surrogate parent is willing to serve; or the length of time the child requires a surrogate parent; or so long as the qualifications to serve and the performance of duties as a surrogate parent are met.

13.11 Termination of Services of a Surrogate Parent: If the surrogate parent wishes to terminate his/her service in that capacity, he/she shall notify the Department of Education, in writing, at least thirty days prior to termination of such services.

13.11.1 The Department of Education shall determine whether each surrogate parent's appointment shall continue or be terminated. Termination shall be justified based only on material failure of the surrogate parent to discharge his/her duties or maintain confidentiality. The surrogate parent shall be given notice of a decision to terminate and shall have an opportunity to respond.

13.12 Compensation for Services as a Surrogate Parent: Surrogate parents shall be reimbursed by the Department of Education for all reasonable and necessary expenses incurred in performance of duties. Reasonable and necessary expenses include, but are not limited to:

13.12.1 mileage for attendance at meetings concerning the child being represented; and

13.12.2 long-distance telephone calls to the school in which the child is being served; and

13.12.3 photocopying of the child's records.

13.13 Liability of the Surrogate Parent: A person appointed as a surrogate parent shall not be held liable for actions taken in good faith on behalf of the child in protecting the special education rights of the child.

#### 14.0 Procedural Safeguards

14.1 The district may require advance notice when parents or guardians wish to visit a proposed educational program.

14.2 Written notice must be given to parents of children with disabilities no less than ten (10) business days unless waived by agreement of both parties. In cases involving a change of placement for disciplinary removal, written notice must be provided no less than three (3) business days.

14.3 Documentation of attempts to notify the parents/guardian, by the district or any other public agency, shall be maintained.

14.4 Mediation of other disputes between the school and the parents/guardian as to the child's education program shall be offered at the discretion of the Department of Education.

14.4.1 The process shall use an impartial, trained individual to assist the parties in working out acceptable solutions in an informed, non-adversarial context.

14.4.2 Parents may be accompanied and advised by individuals of their choice.

14.4.3 The district shall ensure the attendance of a representative with authority to make decisions and commit resources to agreed upon services.

14.4.4 If an agreement is reached as part of the mediation process, it is considered an educational record, which may be released at the parent's discretion.

#### 15.0 Due Process Procedures

15.1 Initiation of Hearing Procedures: A request for a Due Process Hearing shall be made in writing to the Secretary of Education.

15.2 Legal Services: The Secretary of Education's response to the request for a hearing shall include a statement regarding free or low cost legal services.

15.3 The attorney member shall act as chairperson for the Due Process Hearing Panel, shall preside at all hearings, and shall write the final decision of the Due Process Hearing Panel. Any decision must have the concurrence of two members of the due Process Hearing Panel. In those cases where the chairperson holds a minority opinion, the educator member shall write the decision. Any member holding a minority opinion may write a separate report, which shall be attached to the decision.

15.4 Registry of Impartial Hearing Officers: The Department of Education shall keep a list of persons who may serve as hearing officers.

15.5 The hearing shall be scheduled by the chairperson of the Due Process Hearing Panel.

15.6 Any party to a hearing has the right to prohibit the introduction at the hearing of testimony of any witness whose identity has not been disclosed to the parties at least 5 business days before the hearing.

15.7 The parents/guardian shall have the right to receive a written decision which includes the following

parts: statement of issues; summary of the proceedings; summary of evidence; findings of facts; conclusions of law; and summary of the issues on which the parties have prevailed.

15.8 The impartial Due Process Hearing Panel shall reach a final decision, and the chairperson shall record the vote of each panelist. The chairperson shall forward a copy of its final decision to the parties, and to the Department of Education.

15.9 The Department of Education shall forward the decision, with all personally identifiable information deleted, to the chairperson of the Governor's Advisory Council for Exceptional Citizens, and make those findings and decisions available to the public by placing legal notice annually in newspapers of sufficient circulation in each of the three Delaware counties, that this information may be obtained through the Department of Education.

15.10 The chairperson of the Panel shall establish a timeline for the hearing process. In granting specific extensions, the chairperson shall ensure that the petitioner's right to redress is in no way diminished or unnecessarily delayed.

15.11 Non-Exclusivity of Remedies: The remedies identified in this section should not be viewed as exclusive. In certain contexts, other remedies created by law or local district practice may be available.

15.12 Non-Compliance: When the finding indicates non-compliance, the following procedures shall be followed:

15.12.1 The agency shall be presented with the findings and a time frame for corrective action specified by the Department of Education.

15.12.1.1 If the agency agrees with the findings and completes a specified corrective action within a time frame specified by the Department of Education, follow-up activities by the Department of Education will be conducted to verify full compliance.

15.12.1.2 A report of the findings will be prepared and sent to the Chief Administrative Officer of the agency and to the State Secretary of Education and the complainant.

15.13 Compliance: When the findings reveal full compliance, no further action shall be taken.

15.14 Any complainant under this section shall file the complaint in writing with the Department of Education, P. O. Box 1402, Dover, DE 19903, and shall include in the complaint the following:

15.14.1 the name of the agency against which the complaint is filed;

15.14.2 a statement that the agency has violated a requirement of the Individuals with Disabilities Education Act (IDEA) and/or the provisions of this Manual;

15.14.3 the facts on which the statement is based;

15.14.4 the time frame in which the incident(s) occurred;

15.14.5 a description of the attempts made to resolve the issue(s) prior to filing this action; and

15.14.6 name, address, phone number(s) of individual(s) filing the complaint and the legal representative, if any, or of individuals representing a public agency or private organization filing a complaint.

## 16.0 Confidentiality of Student Records

16.1 Parental Refusal to Release Records: In the event that a parent refuses to provide consent before personally identifiable information is disclosed to anyone other than officials of the district or State Department of Education, the parent shall be advised in writing that the district has either:

16.1.1 Recognized that refusal and will not forward the records; or the district will exercise its option to request an impartial due process hearing in order to effect the release of records. In the event that the district elects to seek a due process hearing, the district shall send the parent a copy of the *Special Education: Parents' Guide to Rights and Services* and a copy of parents' due process rights as delineated in this Manual.

## 17.0 High School Graduation

17.1 Continuing their Education: Students with disabilities who are unable to meet the requirements for a diploma shall be given the option to complete those requirements by continuing their education, at district expense, until their 21st birthday.

17.2 Graduation Process: Regardless of the document received at graduation by the student, whether a diploma or a certificate of performance, the student shall not be discriminated against during the graduation ceremonies. Specifically, a student with disabilities shall be allowed to participate in graduation exercises without reference to his/her disability, educational placement or the type of document conferred.

## 18.0 Interagency/Special Programs

18.1 Interagency and Least Restrictive Environment: When it is determined by the IEP team, in making the placement decision, that a child's educational needs cannot be met appropriately in the child's district of residence, inter-district or interagency programs shall be considered within least restrictive environment requirements.

18.2 Interagency Agreements: A written Interagency Agreement shall be developed between or among the local school districts or agencies when special education and related services for children with disabilities are provided in whole, or in part, by a district or districts other than the district of residence.

18.2.1 The agreement may be initiated by the district, agency or the Department of Education (DOE).

18.2.2 The Department of Education (DOE) shall be a party to the agreement when the services are provided



through a special school or program approved by the State Board of Education.

18.2.3 Each Interagency Agreement shall include the:

18.2.3.1 Title of the agreement;

18.2.3.2 Parties involved and their authority to provide special education and related services;

18.2.3.3 Purpose of the agreement;

18.2.3.4 Roles and responsibilities of each agency, including access to records and record transfer procedures, program implementation, dissemination, training activities, funding amounts and sources;

18.2.3.5 End dates and Reauthorization schedule;

18.2.3.6 Procedures to resolve disputes regarding program and fiscal issues; and

18.2.3.7 Signature and title of each party's authorized administrator.

18.3 Responsibility for Placement in Interagency Programs

18.3.1 For initial placement, the child's district of residence shall be responsible for identification, evaluation, and placement procedures including:

18.3.1.1 Setting the date, time, and place of all meetings;

18.3.1.2 Chairing, designating, or agreeing upon a chairperson for all meetings;

18.3.1.3 Communicating the name of the child to be discussed; the date and place of meeting to individuals involved; and]

18.3.1.4] Communicating recommendations of staffing to all appropriate staff.

18.3.2 When it is suspected the child's need for special education can only be met in an inter-district/interagency program, then an IEP meeting shall be arranged by the district of residence. The following procedures for an IEP meeting shall be followed:

18.3.2.1 Representatives of the inter-district/interagency program shall participate in the IEP meeting.

18.3.2.2 A representative of The district of residence shall be a member of the child's IEP team.

18.3.2.3 Arrangements for all evaluation and diagnosis, whether initial or reevaluation, shall be the responsibility of the child's district of residence.

19.0 Special Programs for Children with a Visual Impairment: Services provided to the children with visual impairments by the Department of Education, the local school districts and the Division for the Visually Impaired shall be implemented through an interagency agreement.

20.0 Special Programs for the Children who are Deafblind: The Margaret S. Sterck School, Delaware School for the Deaf (DSD), located in the Christina School District, shall have administrative responsibility for providing services to

the deafblind program.

20.1 The Director and Coordinator of the Deafblind Program shall establish a program management committee in consultation with the Department of Education. Complete minutes of the committee meetings shall be sent to the State Department of Education.

21.0 Special Programs for Children with Autism:

21.1 Definitions of terms applicable only to special programs for children with autism.

21.1.1 "Behavior Management Procedure" means any procedure used to modify the rate or form of a target behavior.

21.1.2 "Behavior Management Target" means any child's behavior that either causes or is likely to cause (a) injury to the child (e.g., self-abuse), (b) injury to another person (e.g., aggression), (c) damage to property, (d) a significant reduction in the child's actual or anticipated rate of learning (e.g., self-stimulation, non-compliance, etc.) or (e) a significant reduction in the societal acceptability of a child (e.g., public masturbation, public disrobing, etc.).

21.1.3 "Emergency Intervention Procedure" means any procedure used to modify episodic dangerous behavior (e.g., self-injurious behaviors, physical aggression property destruction) identified in a behavioral intervention plan.

21.1.4 "Ethical Use" means the application of a procedure in a manner that is consistent with current community values and protects all of a child's rights.

21.1.5 "Informed Consent" means knowing and voluntary consent by the parent(s), based upon a thorough explanation by the program staff member supervising the individualized Behavior Management procedure, of the nature of the procedure, the possible alternative procedures, the expected behavior outcomes, the possible side effects (positive and negative), the risks and discomforts that may be involved, and the right to revoke the Procedure at any time.

21.1.6 Least Restrictive Procedure means that behavior management procedure which is the least intrusive into, and least disruptive of, the child's life, and that represents the least departure from normal patterns of living that can be effective in meeting the child's educational needs.

21.1.7 School means any public school or program (special education or otherwise), which has enrolled a child classified with autism.

21.1.8 Accepted Clinical Practice means any behavior management procedure or treatment, the effectiveness of which has received clear empirical support as documented by publication in peer-reviewed journals or similar professional literature.

21.2 Reserved.

21.3 A Parent Advisory Committee (PAC) shall be established by each local education agency operating a

center for the Delaware Autistic Program.

21.3.1 The function of the PAC shall be to advise the local education agency on matters pertaining to the local center.

21.3.2 Each PAC shall meet no less than four times each year and must be representative of the age groups of children with autism served by the local center.

21.3.3 When a local education agency operates a residential program, at least one member of the PAC shall be a parent of a child with autism served in the residential program associated with that center.

21.4 A Statewide Parent Advisory Committee (SPAC) shall be established whose membership shall consist of one representative elected annually from each local education agency PAC.

21.4.1 The SPAC shall meet no less than four times each year with the Director of DAP advising on matters pertaining to the program.

21.4.2 The establishment of bylaws for the SPAC shall be by vote of all of its eligible members.

21.4.3 A current statewide membership list shall be provided to all parents.

21.4.4 Reimbursement for travel expenses shall be available to members of the Statewide Parent Advisory Committee (SPAC).

21.5 A Peer Review Committee (PRC) shall be established by the Director of the Delaware Autism Program (DAP) and the Department of Education in consultation with the Statewide Monitoring Review Board (SMRB).

21.5.1 Purpose: The purpose of the PRC shall be to review, in light of accepted clinical practice, the professional and clinical issues involved in the use of behavior management procedures to ensure their appropriate use by the staff of a school district serving children with autism.

21.5.2 Composition: The PRC shall consist of three to five members who shall be competent, knowledgeable professionals with at least three years of post-doctoral experience in the theory and ethical application of behavior management procedures. Membership shall be external to the Delaware Autism Program (DAP), the Department of Education, any Delaware school district, and any other State agency or department, excluding State institutions of higher education. Members shall not belong to any in-State committee, council, board or program that deals directly with children with autism.

21.5.3 Operation: The PRC shall elect a chairperson and shall adopt a set of rules to guide its operation. A copy of these rules shall be provided to the Department of Education and the Director of the DAP.

21.5.4 Peer Review Committee (PRC) Responsibilities

21.5.4.1 The PRC shall meet at least every three months to review those behavior management

procedures requiring after-the-fact examination. (See Section 21.7.1)

21.5.4.1.1 A quorum shall consist of a majority of the Committee.

21.5.4.1.2 The PRC chairperson shall announce the dates of review at least one month prior to the review date.

21.5.4.2 The PRC shall meet at least six (6) times per year to review procedures requiring prior, case-by-case review that have been granted interim or on-going approval. The monthly review shall continue until said procedure has been discontinued or the PRC votes otherwise. This review may be held jointly with HRC.

21.5.4.3 The PRC chairperson shall invite staff members of DAP responsible for implementation of behavior management procedures, the Director of DAP, or any other individual (e.g., a consultant to ensure expertise in a specific behavior management procedure under review) to participate as needed in a non-voting capacity.

21.5.4.4 The PRC shall provide technical assistance when requested by the Program Director to develop a behavior management procedure for children engaged in behaviors that pose a significant health risk to the child or others, a significant risk of damage to property, and/or a significant reduction of learning.

21.5.4.5 The PRC shall review and evaluate the training and supervision for the staff that will carry out all behavior management procedures requiring prior, individual review and may evaluate the training of staff carrying out procedures requiring after-the-fact review.

21.5.4.5.1 The PRC shall provide the Program Director with written comments and recommendations concerning the findings of this review.

21.5.4.6 The PRC shall keep written minutes of all its meetings and shall submit them to the Director of DAP, the Department of Education and the HRC chairperson.

21.5.4.6.1 These minutes shall be submitted within two weeks of each meeting.

21.5.4.6.2 An oral summary of the PRC recommendations shall be made within twenty-four hours following the PRC meeting to the Director of DAP and the HRC chairperson.

21.6 A Human Rights Committee (HRC) shall be established by the Director of the DAP and the Department of Education in consultation with the Statewide Autistic Program Monitoring Review Board.

21.6.1 Purpose: The purpose of the HRC shall be to review the ethical and children rights issues involved in the use of behavior management procedures to ensure their humane and proper application.

21.6.2 Composition: The HRC shall consist of five to ten members representing various occupations, who are not employees or relatives of children enrolled in the DAP,

who are not employees of the Department of Education, and who are not members of any in-State organization, agency, or program that deals directly with children with autism. No member of the HRC shall be a member of the PRC.

21.6.3 Operation: The HRC shall elect a chairperson and shall adopt a set of rules to guide its operation. A copy of these rules shall be provided to the Department of Education and the Director of the DAP.

21.6.4 Human Rights Committee Responsibilities

21.6.4.1 Whenever a school proposed to use a behavior management procedure requiring review prior to implementation, the HRC shall meet and review the proposed use of the behavior management procedure. This review shall occur within seven days after the PRC chairperson informs the HRC chairperson of PRC's recommendations.

21.6.4.1.1 A quorum shall consist of a majority of the Committee.

21.6.4.1.2 This review, however, may be held jointly with the PRC.

21.6.4.2 The HRC chairperson shall invite staff members who are responsible for the implementation of behavior management procedures, the Director of DAP, or any other individual (e.g., consultant, parent) to participate as needed in a non-voting capacity.

21.6.4.3 The HRC shall develop a written form to be used to ensure that informed parental consent is obtained before implementation of specified behavior management procedures.

21.6.4.4 The HRC shall keep written minutes of all its meetings and shall submit them to the Director of DAP, the Director, Exceptional Children Group, and the PRC chairperson.

21.6.4.4.1 These minutes shall be submitted within two weeks of each meeting.

21.6.4.4.2 An oral summary of the HRC recommendations shall be made within twenty-four hours following the HRC meeting to the Director of DAP and the PRC chairperson.

21.7 Joint responsibilities of the Peer Review and Human Rights Committees are as follows:

21.7.1 Issue a written statement indicating which behavior management procedure(s) shall be recommended for use:

21.7.1.1 Without further PRC/HRC review during the year approved;

21.7.1.2 Without a case-by-case PRC/HRC review but with after-the-fact review (timelines to be established by the PRC); or

21.7.1.3 Only with prior case-by-case PRC and HRC (before-the-fact) review;

21.7.2 Recommend written modifications, if necessary, of behavior management procedures along with accompanying rationale;

21.7.3 Review a school's proposed Emergency Intervention Procedures for children with autism and issue a written statement indicating which Emergency Intervention Procedures shall be recommended:

21.7.3.1 For use without after-the-fact reporting to the PRC/HRC; or

21.7.3.2 For use with after-the-fact reporting to the PRC/HRC;

21.7.4 Issue an advisory, not mandatory, statement presenting a recommended hierarchy of reviewed behavior management procedures according to the Least Restrictive Procedure principle.

21.7.4.1 Notice shall be given to parents of children with autism in the program of the availability upon request, and at no cost to parents, of copies of the reviewed behavior management procedures.

21.7.4.2 A copy shall also be forwarded to the Governor's Advisory Council for Exceptional Citizens.

21.7.5 The PRC chairperson, in cooperation with the HRC chairperson, shall announce the joint PRC/ HRC annual review at least one month prior to the review date.

21.7.5.1 At the discretion of either chairperson, Committees may meet jointly or separately to conduct before-the-fact and after-the-fact reviews.

21.7.6 Approve, before-the-fact, the housing of children under age twelve with a child over age sixteen in a community-based residential program for children with autism operated by a school district designated and approved by the Secretary of Education as the administering agency for the DAP.

21.7.7 Review, within 30 days of the granting of interim approval, any request by a school for the immediate implementation of a behavior management procedure requiring prior, case-by-case review.

21.7.7.1 Immediate implementation of a proposed procedure may occur after the Program Director has obtained unanimous interim approval from one PRC member and two HRC members.

21.7.7.2 Proposed prior review procedures not requiring immediate implementation shall be submitted by a school directly to PRC and HRC chairperson to be reviewed within two weeks of submission of the proposal.

21.7.8 Have access to the educational records of any child with autism for purposes of 21.5.1 and 21.6.1 of this section.

21.7.8.1 A quorum of a joint meeting shall consist of a majority of combined membership.

21.7.9 Submit written Procedural Descriptions for Behavior Management and Emergency Interventions

21.7.9.1 Prior to utilizing a behavior management procedure or an emergency intervention procedure for a particular child with autism, a school shall submit written procedural descriptions for at least annual joint review by the PRC and HRC.

21.7.9.1.1 The annual date of review shall be announced by the HRC chairperson at least one month prior to the review date.

21.7.9.1.2 The school shall submit written procedural descriptions at least two weeks prior to the joint annual review date to the PRC and HRC chairpersons.

21.7.9.1.3 The written descriptions shall contain information determined by PRC and HRC and set forth in their operating rules.

21.7.9.1.4 PRC and HRC may request pertinent information needed for the completion of reviews.

21.7.9.2 After reviewing each behavior management and emergency procedure, the PRC and HRC shall indicate what kind of review each procedure requires (annual, after-the-fact, or prior case-by-case review). A school serving children with autism shall then submit proposals in accordance with PRC/HRC recommendations.

21.7.9.3 Behavior management and emergency intervention procedures that require annual review only may then be implemented by a school without further PRC/HRC review until the next annual joint review. A school shall require that the use of these procedures be indicated in a child's IEP.

21.7.9.4 Behavior management and emergency intervention procedures that require after-the-fact review only shall be used by a school without case-by-case review, but shall be reported after the fact to the PRC by dates specified by the Committee chairperson.

21.7.9.4.1 The school shall submit written records as set forth in PRC and HRC operating rules, or any other relevant information requested by either Committee, to the PRC chairperson at least one week prior to the review date.

21.7.9.5 Behavior management procedures that require prior case-by-case review shall be submitted to the PRC and HRC for joint review prior to implementation.

21.7.9.5.1 If the PRC and HRC decide not to review the case jointly, the PRC shall first review the proposal.

21.7.9.5.2 The proposal shall contain information determined by PRC and HRC and set forth in their operating rules.

21.7.9.5.3 Recommendations and rationale for the decision shall be provided whenever the PRC fails to recommend use of a proposed procedure.

21.7.9.6 Following the PRC recommendation (or following joint PRC/HRC approval), written informed parental consent shall be obtained by the school.

21.7.9.6.1 If an interim consent is obtained by telephone, then two witnesses to the content of the conversation shall sign a form certifying that the parent(s) gave informed consent. The school must then obtain written verification of this consent from the parent(s).

21.7.9.6.2 Parents may withdraw consent

at any time; if said withdrawal is done verbally in person or by telephone, the parent shall provide written verification of withdrawal within 10 days of the initial notice.

21.7.9.7 Whenever the PRC and HRC choose not to meet jointly, the information provided by a school shall be submitted to the HRC along with the PRC's recommendations.

21.7.9.7.1 Recommendations and rationale for the decision shall be provided whenever the HRC fails to recommend the use of a proposed procedure.

21.7.9.7.2 Whenever a proposal is recommended for implementation, an IEP objective shall be developed relating to the behavior management target and the proposed procedure.

21.7.9.8 Whenever the PRC or HRC fail to recommend or modify the proposed procedure, the parent(s) shall be notified by the school.

21.7.9.8.1 If the procedure is to be modified, informed written consent shall be obtained from the parents.

21.7.9.9 The school staff responsible for implementing the behavior management procedure shall provide written reports to the PRC and HRC, summarizing the records (which shall be kept on a daily basis) on the use and results obtained by implementing the procedure.

21.7.9.9.1 Records shall be kept in an objective, quantitative form, permitting easy evaluation of child data.

21.7.9.9.2 The PRC and HRC shall have unrestricted access to all data, records, and reports relating to the behavior management procedures used.

21.7.9.10 Any behavior management or emergency intervention procedure that is developed by a school after the joint annual review date for a particular school year shall be submitted to the PRC and HRC chairpersons for joint review prior to any implementation of the new procedure, unless interim approval has been recommended as described in 21.7.7.

21.8 Private facilities serving autistic children shall have Peer Review and Human Rights Committee policies as follows:

21.8.1 Private facilities serving children with autism located in Delaware shall have Peer Review Committee and Human Rights Committee policies that comply with DELACARE standards (requirements for Residential Child Care Facilities, Department of Services for Children, Youth and their Families).

21.8.2 Private facilities serving Delaware children with autism located in other states shall comply with the Peer Review Committee and Human Rights Committee policies used by the state in which the facility is located.

21.8.2.1 Said policies shall be reviewed by Delaware's Department of Education to determine that they grant protection substantially equivalent to that provided by

Delaware for children prior to any recommendation of approval for private placement by the State Board of Education.

21.8.3 Private facilities serving Delaware children with autism located in states which have no Peer Review Committee and Human Rights Committee policies shall have written Peer Review and Human Rights Committee policies that shall be reviewed by Delaware's Department of Education in consultation with Delaware's PRC, to determine that they grant protection substantially equivalent to that provided by Delaware for children, prior to any recommendation of approval for private placement by the Secretary of Education.

21.8.4 Private facilities serving Delaware children with autism located in states which require substituted judgment or other court order for the use of aversive or related restrictive procedures, and which have obtained such an order for each Delaware child, shall be deemed to have met the peer review and human rights requirements of this section.

21.9 Whenever psychotropic medication has been prescribed by a physician and appears to affect adversely the educational program of a child with autism, the administrator of the center shall contact the parent and request a medication review with the parent and physician.

21.10 Appropriate liaison with the Department of Health and Social Services and other agencies shall be established by the Director of DAP and the Department of Education.

## **22.0 Students in Need of Unique Educational Alternatives**

22.1 Unique Educational Alternative support shall be available for those children with disabilities who have needs that cannot be addressed through the existing resources/programs of the State. Unique Educational Alternatives include, but are not limited to, private residential placements and private day programs.

22.1.1 The Secretary of Education shall approve children for Unique Educational Alternative support and the type of Unique Educational Alternative Support to be provided when such support is necessary to provide special education and related services to a child with a disability.

22.1.2 If the Unique Educational Alternative is a private residential or private day placement, the Secretary of Education shall approve the designation of each child eligible for private placement and the private school or facility in which the approved child is to be enrolled.

22.1.3 Such approval of unique educational alternatives shall be for no more than a one-year period, ending no later than August 31 of the year in which the child is to be enrolled.

22.2 To the extent authorized by the General Assembly in the Budget Act, the Department of Education shall

convene the Interagency Collaborative Team (ICT) to review the expenditures for placements of students in need of Unique Educational Alternatives.

22.2.1 The Interagency Collaborative Team (ICT) membership shall consist of:

22.2.1.1 Division Director, Division of Child Mental Health Services, DSCYF;

22.2.1.2 Division Director, Family Services of DSCYF;

22.2.1.3 Division Director, Division of Youth Rehabilitation Services of DSCYF;

22.2.1.4 Division Director, Division of Mental Retardation of DHSS;

22.2.1.5 Division Director, Division of Alcoholism, Drug Abuse and Mental Health, DHSS;

22.2.1.6 Director of the Office of the Budget, or designee;

22.2.1.7 Controller General or designee;

22.2.1.8 Director, Exceptional Children's Group, Department of Education (DOE), who will serve as Chair;

22.2.1.9 Associate Secretary, Curriculum & Instructional Improvement, Department of Education (DOE).

22.2.2 A Director shall be assigned to the Interagency Collaborative Team (ICT) and may designate staff to be their representative on the Interagency Collaborative Team (ICT) only if these designated representatives are empowered to act on behalf of the Division Director, including commitment of Division resources, for a full fiscal year.

22.2.3 The Interagency Collaborative Team (ICT) shall invite to its meetings: a representative of a responsible school district for the case under consideration, the parents of the child, and other persons the team believes can contribute to their deliberations.

22.2.4 The Interagency Collaborative Team (ICT) shall:

22.2.4.1 Review existing assessments of new referrals;

22.2.4.2 Prescribe, if required, additional assessments for new referrals;

22.2.4.3 Review proposed treatment plans of new referrals;

22.2.4.4 Recommend alternatives for treatment plans of new referrals;

22.2.4.5 Coordinate interagency delivery of services;

22.2.4.6 Review at least annually, current Unique Educational Alternatives for the appropriateness of treatment plans and transition planning;

22.2.4.7 If appropriate, designate a Primary Case Manager for the purpose of coordination of service agencies;

22.2.4.8 If appropriate, designate agencies to be involved in collaborative monitoring of individual cases.

22.2.5 The Interagency Collaborative Team (ICT) shall ensure that state costs incurred as the result of a Team recommendation or assessment of a child currently funded from the Unique Educational Alternatives appropriation for this purpose in the Budget Act will be covered from the existing appropriation.

22.2.5.1 New referrals will be assessed in the interagency manner described above.

22.2.5.2 The Interagency Collaborative Team (ICT) may accept and review cases initiated by other agencies, but in all cases, the school district of residence must be involved in the review.

22.2.5.3 Cases reviewed by the Interagency Collaborative Team (ICT) will employ Unique Educational Alternatives funding to cover state costs to the extent determined appropriate by the Interagency Collaborative Team.

22.2.5.4 Other agencies may recognize a portion of the responsibility for the treatment of these children if determined appropriate by the Team. Funds may be transferred upon the approval of the Budget Director and the Controller General.

22.2.6 The Interagency Collaborative Team (ICT) shall report on its activities to the Governor, Budget Director, President Pro-Tempore, Speaker of the House and the Controller General by February 15 of each year. The report shall address the status of items addressed in the previous February ICT Annual Report.

22.3 Interagency Collaborative Team (ICT) Review Criteria

22.3.1 The Interagency Collaborative Team (ITC) shall recommend to the Secretary of Education action on referrals for approval of Unique Educational Alternatives based on the following criteria:

22.3.1.1 A school district or other public agency support/program is either not available or is not adequate.

22.3.1.2 The school district certifies that the school district cannot meet the needs of the child with existing resources and/or program.

22.4 Procedures for Districts Seeking to Place Students in Unique Educational Alternative Settings

22.4.1 The responsible district and fiscal agency for a child seeking Unique Educational Alternative support shall be the child's district of residence. The district is responsible for inviting the parent, and, if appropriate, the student, to the ICT meeting.

22.4.2 The chairperson of the Interagency Collaborative Team shall be contacted by the district special education supervisor or designee as soon as the district has reason to believe Unique Educational Alternative support may be needed.

22.4.3 The IEP team that includes district level representation shall meet and determine if the child's need for special education and related services can be met within the existing resources/programs available to the district.

22.4.3.1 Representatives of all agencies involved with the child shall be invited to attend this meeting.

22.4.4 The district shall submit an application to the Chair of the ICT at least five business days before the meeting if it is determined that the child's needs for special education and related services as delineated on the child's IEP cannot be met through existing resources/programs.

22.4.5 The application will include:

22.4.5.1 Current and other relevant assessment information;

22.4.5.2 A historical summary of all placements and/or major interventions and support services that have been provided to the student;

22.4.5.3 A current IEP;

22.4.5.4 A concise statement of the needs that cannot be addressed through existing recourses or programs;

22.4.5.5 A list of all agencies and resources that are currently supporting the child and the family; and

22.4.5.6 An Interagency Release of Information Form.

22.5 Procedures for the ICT

22.5.1 The ICT shall review the application at its next monthly meeting.

22.5.2 Parents and representatives of all involved agencies shall be invited to participate in the meeting.

22.5.3 Recommendations of the Interagency Collaborative Team shall be shared in writing with the school district, parents and other agency staff involved with the case within five business days. The ICT may:

22.5.3.1 Request additional information before making a final recommendation. This may include the involvement of additional agencies, additional assessments and/or review of additional programs/resources that the local team had not considered;

22.5.3.2 Request for additional information shall be sent to the school district, parents, and other agency staff involved in the case within five business days of the meeting and as soon as the additional information is available, the case shall be brought back to the ICT for further review.

22.5.3.3 Recommend approval and agree that the child has needs that cannot be addressed through existing programs/resources. The local team may then develop the specifics of the Unique Educational Alternative support; or

22.5.3.4 Recommend rejection and ask the local team to use existing programs/resources to meet the educational needs of the children.

22.5.4 Final recommendations of the ITC shall be shared in writing with the school district, parents and other

agency staff involved in the case within five business days.

22.5.4.1 If the recommendation is for approval, the local team shall develop the specifics, including costs, of the Unique Educational Alternative.

22.5.4.2 The final plan, with costs, shall be submitted to the Chair of the ICT.

22.5.4.3 The Chair shall submit the recommendations for approval to the Secretary of Education.

22.5.4.4 A recommendation for rejection shall be submitted by the Chair of the ICT to the Secretary of Education for final action.

22.5.4.5 The parent, district superintendent, the special education supervisor, and the director of any other involved agency shall be notified in writing by the Secretary of Education, following the action.

22.6 Financial Aid for Unique Educational Alternatives

22.6.1 Financial aid for children approved for Unique Educational Alternative support by the Secretary of Education, other than private residential or day schools, shall include only those costs that are not covered by an existing funding line.

22.6.1.1 The Department of Education shall pay 85% of the Unique Educational costs and the local school district will pay 15% of the costs unless waivers for the local school district are recommended by the Interagency Collaborative Team (ICT).

22.6.2 Financial aid for children with disabilities approved for private placement by the Department of Education shall include maintenance, transportation and tuition.

22.6.2.1 The Department of Education shall pay 85% of the private placement costs and the local school district shall pay 15% of the private placement costs.

22.6.2.2 The amount authorized for payment shall be the amounts charged by the private school or facility for tuition or program costs, transportation and maintenance, in accordance with the definitions in the *Delaware Code*.

22.7 Independent Placements by School District or Agency: A school district or other public agency may independently place a child with a disability in a private or public school or facility and provide the tuition from appropriate school district or other agency funds without Department of Education approval.

22.7.1 Such an independent placement in a private or public out-of-state facility using local funds must, nonetheless, be certified as a program meeting the applicable standards of the host state.

22.8 School District/Agency Responsibility for Private Placements: When a school district or other public agency responsible for the education of children with disabilities is unable to provide an appropriate program, the district or other public agency may refer the student for consideration of a unique educational alternative, including a private

placement.

22.8.1 District Certification and Documentation

22.8.1.1 The local school district certification that the child is eligible for private placement and the statement pertaining to the lack of an appropriate program shall be forwarded on the designated forms to the Department of Education for review by the Interagency Collaborative Team (ICT) prior to action by the Secretary of Education.

22.8.1.2 Documentation shall accompany each application describing the nature and severity of the child's disabling condition(s).

22.8.1.3 Such documentation shall include report(s) of the appropriate specialist(s), depending upon the nature of the child's disability.

22.8.1.4 Additional documentation will be requested, if needed, in order to make a recommendation as to the child's eligibility for private placement or the appropriateness of the requested placement.

22.9 Responsibility for Individualized Education Program

22.9.1 The district or any other public agency shall develop the initial Individualized Education Program for each child with a disability referred for approval for placement that is in a private school or facility.

22.9.2 The district or other public agency shall ensure that a representative of the private school or facility attends the meeting. If a representative of the private school cannot attend the meeting, the district shall use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.

22.9.3 After a child with a disability enters a private school or facility; any meetings to review and revise the child's IEP may be initiated and conducted by the private school or facility at the discretion of the district or any other public agency.

22.9.4 If the private school or facility initiates and conducts these meetings, the district or any other public agency shall ensure that the parents and a district or any other public agency representative are involved in any decision about the child's IEP and agree to any proposed changes in the program before those changes are implemented.

22.9.5 District of Residence: The referring district and fiscal agency for a child in private placement is the child's district of residence.

22.9.6 Responsibility for Compliance: Primary responsibility for compliance with State and federal regulations shall remain with the school district or other public agency responsible for the education of the child, even if a private school or facility implements a child's IEP.

22.10 State Responsibility for Private School Accountability: In implementing State and federal regulations governing accountability for and to private

programs, the Department of Education shall have the authority to:

22.10.1 Monitor compliance through procedures such as written reports, on-site visits and parent questionnaires.

22.10.2 Develop regulations that define the standards by which private schools and facilities may be approved to serve children with disabilities, and a schedule for reevaluation.

22.10.3 Disseminate copies of applicable standards to each private program to which a public agency has referred or placed a child with disability.

22.10.4 Provide an opportunity for those private schools or facilities to participate in the development and revision of State standards which apply to them.

23.0 General Supervision of Education for Children with Disabilities: The Department of Education (DOE) shall ensure that each educational program for children with disabilities administered within the State, including each program administered by any other public agency, is under the general supervision of the persons responsible for educational programs for children with disabilities in the State educational agency; and meets education standards of the State educational agency.

23.1 Documentation of Department of Education (DOE) activity in meeting its responsibilities shall be maintained in a manner consistent with effective management procedures. Such documentation shall include, but not be limited to, issues pertaining to:

23.1.1 General Supervision, Cooperative Agreements, Complaint/Due Process Procedures, Compliance Monitoring, Project Coordination, Program Evaluation, Comprehensive System of Personnel Development, Dissemination; and Finance/Administration.

23.2 The Department of Education (DOE) shall, through its Comprehensive Compliance Monitoring System, ensure that each public agency develops and implements an IEP for each of its children with disabilities.

23.3 The Department of Education (DOE) shall distribute regulations, sample documents and letters of notification to all agencies (public and non-public) providing services to children with disabilities.

23.4 Nothing in the Individuals with Disabilities Education Act, as amended, or in these regulations shall be construed by any party as permitting any agency of the State to reduce medical or other assistance under, or alter the eligibility requirements of, programs funded in whole or in part through Title V (Maternal and Child Health) or Title XIX (Medicaid) of the Social Security Act, with respect to the provision of a free appropriate public education for children with disabilities within the State.

23.5 Compliance Monitoring: The Department of Education (DOE) shall fulfill a minimum of six

administrative responsibilities regarding monitoring of programs for children with disabilities. These responsibilities are:

23.5.1 Adoption and use of policies and procedures to exercise general supervision over all educational programs for children with disabilities within the State.

23.5.2 Adoption and use of a method to continuously collect and analyze information sufficient to determine compliance of sub-grantees and other agencies providing services to children with disabilities within the State, and agencies providing services to Delaware children with disabilities in other states, with applicable State and federal program operation requirements.

23.5.3 Adoption and use of a method by which the Department of Education (DOE) formally directs that each deficiency identified in program operations be corrected by the appropriate agency.

23.5.4 Adoption and use of a method by which the Department of Education (DOE) enforces State and federal legal obligations by requiring written assurances of compliance with such obligations as a condition of a grant or contract; and imposition of appropriate sanctions when a public agency fails or refuses to correct a deficiency. If, after giving reasonable notice and an opportunity for a hearing, the Department of Education (DOE) determines that a local school district or other public agency has failed to comply with any requirement in the *Administrative Manual for Special Education Services*, the Department of Education (DOE) shall:

23.5.4.1 Make no further payments to the district or agency until the Department of Education (DOE) is satisfied that there is no longer any failure to comply with the requirement; or

23.5.4.2 Consider its decision in its review of any application made by the district or agency for IDEA- B payments;

23.5.4.3 Or both.

23.5.5 Any school district or other public agency receiving a notice from the Department of Education under 23.5.4 is subject to public notice provisions as required under 34 CFR 300.196.

23.5.6 If, through its regular monitoring procedures, complaints, hearing results or other sources of information, there is evidence that the district or agency is making special education placements that are inconsistent with 34 CFR 300.550 (Least Restrictive Environment) or federal regulations, the Department of Education shall review the district or agency's justification for its action and shall assist the district or agency in planning and implementing any necessary corrective action.

23.6 Scope of Department of Education Compliant Monitoring Authority

23.6.1 The Department of Education, acting on behalf of the State Board of Education, shall have the



authority to conduct monitoring, including collection and use of both off-site and on-site information.

23.6.2 The State Secretary of Education shall have the authority to compel the correction of deficiencies identified in program operations.

23.6.3 The State Secretary of Education shall have the authority to enforce legal obligations.

23.6.4 Department of Education standards relative to special education and related services shall be applicable to, and binding upon, all education programs for children with disabilities administered within the State.

23.7 The Department of Education Methods of Monitoring shall include:

23.7.1 Written monitoring procedures which cover all aspects of State and federal requirements and which are uniformly applied to all public agencies;

23.7.2 Identification of deficiencies in program operations by collecting, analyzing, and verifying information sufficient to make determinations of compliance/non-compliance with State and federal requirements;

23.7.3 Determination of whether or not each educational program for children with disabilities administered within the State, including private schools in which these children are placed by public agencies, meets educational standards of the Department of Education, the requirements of IDEA, Part B, and where applicable, of Educational General Administrative Requirements (EDGAR).

23.7.4 Use of other information provided to the Department of Education through complaints, hearings and court decisions, evaluation and performance reports, and other formally submitted documents to determine if agencies and programs are in need of specific compliance interventions;

23.7.5 Monitoring the implementation of any compliance agreement and the investigation of the implementation of any orders resulting from the resolution of complaints filed with the Department of Education against the agency being monitored;

23.7.6 Use of off-site review, on-site review, letters of inquiry, and follow-up or verification of specific activities;

23.7.7 Written documentation of each monitoring activity through correspondence and reports;

23.7.8 Specification of a reasonable period of time to complete the analysis of information collected for monitoring or evaluation purposes to identify deficiencies of a program or public agency in meeting State and federal requirements and report such deficiencies to the public agency; and, where applicable, of Educational General Administrative requirements (EDGAR);

23.7.9 Specification of a reasonable period of time for reaching a determination that a deficiency in program

operations exists, and for notifying the agency in writing if required;

23.7.10 Requirement of a written notice (for example, monitoring report, letter of findings) that:

23.7.10.1 Describes each corrective action which must be taken, including a reasonable time frame for submission of a corrective action plan;

23.7.10.2 Requires that the corrective action plan provide for: the immediate discontinuance of the violation; the prevention of the occurrence of any future violation; documentation of the initiation and completion of actions to achieve current and future compliance; the timeframe for achieving full compliance; and the description of actions the agency must take to remedy the identified areas of non-compliance.

23.7.11 Specification of a reasonable period of time after receiving a corrective action plan from an agency in which the Department of Education shall determine whether the corrective action plan meets each of the requirements or if additional information is required from the agency;

23.7.12 Specification of a reasonable period of time from the date of the original written notice, in which the Department of Education shall determine that:

23.7.12.1 The agency has submitted an acceptable corrective action plan which complies fully with all of the requirements; or

23.7.12.2 Reasonable efforts have not resulted in voluntary compliance.

23.7.13 That a school district or other public agency be given reasonable notice and an opportunity for a hearing with respect to an identified deficiency.

23.7.13.1 If the school district or other public agency declines a hearing, the Department of Education shall reach a final decision of compliance or non-compliance within ten (10) days.

23.7.13.2 If the Department of Education conducts a hearing, the Department of Education shall reach a final decision of compliance or non-compliance within thirty (30) days after the conclusion of the hearing; or

23.7.13.3 If the Department of Education reaches a final decision of non-compliance (i.e., the school district or other public agency has violated State or federal requirements); the Department of Education shall:

23.7.13.3.1 Make no further payments under Part B to the school district or other public agency until the school district or other public agency submits an acceptable corrective action plan;

23.7.13.3.2 Disapprove any pending school district or other public agency Part B local application, when appropriate;

23.7.13.3.3 Seek recovery of funds, and impose any other sanctions authorized by law.

23.8 Comprehensive System of Personnel

Development: The Department of Education shall provide opportunities for all public and private institutions of higher education, and other agencies and organizations, including representatives of individuals with disabilities, parent, and other advocacy organizations in the State which have an interest in the education of children with disabilities, to participate fully in the development, review, and annual updating of the Comprehensive System of Personnel Development.

23.8.1 The Department of Education shall conduct an annual needs assessment to determine if a sufficient number of qualified personnel are available in the State, and to determine the training needs of personnel relative to the implementation of federal and State requirements for programs for children with disabilities.

23.8.2 The results of the annual needs assessment shall be used in planning and providing personnel development programs.

23.8.3 The Department of Education shall implement a Comprehensive System of Personnel Development which includes:

23.8.3.1 The inservice and preservice training of general and special education instruction, related services, and support personnel. Such training shall include training and technical assistance for ensuring that teachers and administrators in all public agencies are fully informed of their responsibilities in implementing the least restrictive environment requirements and other requirements for special education and related services;

23.8.3.2 Procedures to ensure that all personnel necessary to carry out the provision of special education and related services are qualified and that activities sufficient to carry out the personnel development plan are scheduled;

23.8.3.3 Procedures for acquiring and disseminating to teachers and administrators of programs for children with disabilities significant information derived from educational research, demonstration, and similar projects, and for adopting, where appropriate, promising educational practices and materials.

23.8.4 On-going inservice training programs shall be available to all personnel who are engaged in the education of children with disabilities.

23.8.4.1 These programs shall include: (1) use of incentives which ensure participation by teachers, such as released time, payment for participation, options for academic credit, salary step credit, certification renewal, new instructional materials, and/or updating professional skills; (2) involvement of local staff; and (3) use of innovative practices which have been found to be effective.

23.8.5 The Department of Education shall coordinate and facilitate efforts among the Department of Education, districts and agencies, including institutions of higher education and professional associations, to recruit, prepare, and retain qualified personnel, including personnel

from minority backgrounds, and personnel with disabilities.

23.8.6 The Department of Education shall coordinate with each district, agency and/or institution of higher education all responsibilities relative to the gathering of data, training, recruitment and retention as delineated in 34 CFR 300.380.

23.8.7 The Department of Education shall disseminate copies of statutes, regulations, and standards applicable to programs for children with disabilities to each local education agency, institution, the GACEC and organization responsible for carrying out the programs.

23.8.7.1 Such dissemination includes each private school and facility to which a public agency has referred a child with a disability.

23.8.7.2 The Department of Education shall disseminate information on significant knowledge derived from educational research and other sources, promising practices, materials, and technology, proven effective through research and demonstration which may be of assistance to LEAs and other agencies in the improvement of education and related services for children with disabilities.

23.8.7.3 The Department of Education shall be responsible for the following dissemination activities:

23.8.7.3.1 Notice of any changes in statutes, regulations, or standards applicable to programs for children with disabilities shall be issued in writing, with copies to the head of each school district or other public agency, to each supervisor of programs for children with disabilities and to institutions of higher education;

23.8.7.3.2 Regular meetings, at least quarterly, of LEA and other agency supervisors of special education programs;

23.8.7.3.3 Learning Resource System publications relative to current issues and promising practices.

## 23.9 Finance/Administration

23.9.1 Child Count Procedures: The Department of Education shall specify in writing the procedures and forms used to conduct the annual count of children served. Such procedures and forms shall conform to 34 CFR 300.750 through 300.755 and written instructions received from the Office of Special Education and Rehabilitative Services (OSERS).

23.9.2 Administration of Funds: Funds for the education of children with disabilities shall be administered pursuant to Title 14 of the *Delaware Code*.

23.9.3 Review of LEA Application: The Department of Education shall develop and use a review sheet to document that all required IDEA-B, EDGAR, and State statutes and regulations have been applied to the review and approval of each LEA Application.

23.9.3.1 Each LEA shall be notified in writing, using a standard format of the status of its Application, i.e., approved, not approved, and any conditions which must be

met in order for the Application to be approved.

23.9.3.2 All amendments to an LEA Application shall be reviewed and approved using the same requirements and procedures used for an initial Application.

23.9.3.3 In the event that the Department of Education and the LEA cannot negotiate and effect an approved LEA Application, the Department of Education shall notify the LEA in writing of its right to a hearing and the procedures for obtaining a hearing.

23.9.3.4 If, after a hearing, the district or agency application is found to be unapprovable, the district or agency may appeal this finding to the Secretary, U. S. Department of Education. The applicant shall file a notice of the appeal with the Secretary within 20 days after the applicant has been notified by the Department of Education of the results of the hearing.

23.9.3.5 The State shall make available at reasonable times and places to each applicant all records of the agency pertaining to any review or appeal the applicant is conducting under this section, including records of other applicants.

23.9.3.6 An applicant from a district or agency shall include the following information:

23.9.3.6.1 A description of how the applicant will meet the federal requirements for participation of children enrolled in private schools.

23.9.3.6.2 The numbers of children enrolled in private schools which have been identified as eligible for benefits under the program.

23.9.3.6.3 The basis the applicant used to select the children.

23.9.3.6.4 The manner and extent to which the applicant complied with Education Department General Administrative Regulations (EDGAR, January 1, 1996, USDE).

23.9.3.6.5 The places and times the children will receive benefits under the program.

23.9.3.6.6 The difference, if any, between the program benefits the applicant will provide to public and private school children, and the reasons for the differences.

23.9.4 Recovery of Funds for Misclassified Children: A State audit shall be conducted during the month of October to ascertain that units awarded on September 30 are in full operation on or prior to that date with evidence of services being provided. If, during the audit of State units for the education of children with disabilities, it is discovered that a child has been erroneously classified, this discrepancy will be made known to the local education agency and will also be reported to the proper persons at the Department of Education.

23.9.4.1 The specific procedures used in order to authenticate the count of children will be found in the *Monitor's Handbook for the September Audit and Site Monitoring*.

23.9.4.2 The local education agency will be notified that its Part B grant award has been reduced by an amount equal to that fiscal year's per child allocation for each child determined to have been misclassified.

23.9.4.3 Should discovery of misclassification occur at a time other than during the audit of State units, such as in the fourth quarter of the Grant, the following year's Grant Award shall be reduced accordingly. The task of identifying children who have been misclassified shall not only during the September 30 audit of State units, but during all other IDEA monitoring and evaluation on-site visits as well.

#### 23.10 Other SEA Responsibilities

23.10.1 Ensure Adequate Evaluation: As a means of ensuring adequate evaluation of the effectiveness of the policies and procedures relative to child identification shall:

23.10.1.1 Incorporate within its Comprehensive Compliance Monitoring System process a series of questions about the Childfind activities which will be asked of special and regular education teachers, administrators, related services personnel, Part H personnel and other public agencies;

23.10.1.2 Systematically review each LEA's application for federal funds to ensure that it contains a complete description of the LEA's child identification process;

23.10.1.3 Annually review the child count data to determine trends and anomalies in the types and numbers of children identified.

#### 24.0 Funding Issues for Children with Disabilities

24.1 Reimbursement under the Unit System: Eligibility of the local education agencies to receive reimbursement under the unit system is contingent upon:

24.1.1 The proper identification of children with disabilities in accordance with Title 14 of the *Delaware Code* and Sections 2.0, 3.0, and 4.0 of these regulations; and

24.1.2 A State Department of Education audit to document the child count for units awarded on September 30, and to document the availability of current and complete IEPs for children included in the count.

24.2 Aide Positions for Services to Children with Disabilities (as authorized under 14 *Del. C.*, Section 1324).

24.2.1 All paraprofessionals in such positions shall work under the supervision of teachers.

24.2.2 The following positions may be authorized:

24.2.2.1 Trainable Mental Disability Unit: One classroom teacher, or in lieu of a teacher, two aides may be employed, as long as the number of aides does not exceed the number of teachers in any given special school. Such teachers or aides who work during the eleventh and twelfth months shall be paid for two hundred twenty-two (222) days.

24.2.2.2 Severe Mental Disability Unit: One classroom teacher and one classroom aide may be employed

per unit in any given special school. In lieu of the teacher, two additional aides may be employed as long as the number of aides does not exceed the number of teachers in any given school by a 2 to 1 ratio. Such teachers or aides who work during the eleventh and twelfth months shall be paid for two hundred twenty-two (222) days.

24.2.2.3 Autism Unit: One teacher and one aide may be employed per unit. Such teachers or aides who work during the eleventh and twelfth months shall be paid for two hundred twenty-two (222) days.

24.2.2.4 Physical Impairment Unit: One classroom teacher and either one aide or attendant may be employed per unit in any given special school.

24.2.2.5 Hearing Impairment Unit: One classroom teacher and one aide per primary unit, one classroom teacher and one aide for other units (grades 4-12), and one clerk-aide for the parent-child program may be employed in any given special school.

24.2.2.6 Deaf/Blindness Unit: One classroom teacher and one classroom aide may be employed per unit. In lieu of the teacher, two additional aides may be employed as long as the number of aides does not exceed the number of teachers in any given school by a 2 to 1 ratio. Such teachers or aides who work during the eleventh and twelfth months shall be paid for two hundred and twenty-two (222) days.

24.2.2.7 Intensive Learning Center Unit: One classroom teacher, or in lieu of a teacher, two aides, may be employed as long as the number of aides does not exceed the number of teachers in any center, and that all aides work under the direct supervision of teachers.

24.2.3 The use and ratio of aides to teachers shall be dependent upon the rationale developed by the agency.

24.3 School Nurses (as authorized by 14 *Del. C.*, Section 1310)

24.3.1 A nurse shall be employed for eight (8) or more units of children with autism, physical impairment, trainable mental disability, severe mental disability, or a combination thereof, and for hearing impairment as per regular district formula, i.e., 40:1. Such units shall be subtracted from the district's total units so that they are not counted twice.

24.4 Other Positions for Services to Children with Disabilities

24.4.1 Any special school with an enrollment of ten (10) or more units may employ a secretary (12 months) and proportional secretarial services for less than 10 units. Such units must be subtracted from the district's total units so that they are not counted twice.

24.4.2 Custodial services shall be provided upon the regular custodial formula with consideration given for residence hall care.

24.4.3 An instructional media specialist shall be assigned to the school for the hearing impaired when there is a minimum of ten (10) units.

24.4.4 A budget item shall be provided for contractual services in order to give to a school for hearing impaired the appropriate services in such fields as, but not limited to, speech pathology, school psychology, social work, and guidance counseling.

24.4.5 Whenever the State Board of Education designates a particular school district to serve as administrator for the statewide program for deaf/blind pupils, that district may employ as a statewide coordinator at the principal's rank and salary, a principal for eight (8) or more such units of deaf/blind children. If a principal is assigned responsibility for such a program for fewer than eight (8) units, the support for the assignment shall be in the same ratio as the number of authorized units is to eight (8) units.

3 **DE Reg.** 1709 (6/1/00) - (Sec. 18.0 through 24.4.5)

25.0 Advisory Council for Exceptional Citizens. The Governor shall appoint an advisory council to act in an advisory capacity to the Department of Education, the State Board of Education and other state agencies on the needs of exceptional citizens. The General Assembly shall provide for the maintenance of the council. The council shall also serve in the capacity of the advisory panel as required by PL 94-142 (20 U.S.C. Section 1400 et seq.). (14 *Del. C.* 195, Section 3108; 51 *Del. Laws. C.* 287, Section 3; 61 *Del. Laws*, 190, Section 7; 71 *Del. Laws*, c. 180, Section 147.)

25.1 An annual report prepared by the Governor's Advisory Council for Exceptional Citizens shall be made available to the public in a manner consistent with other public reporting requirements.

25.1.1 The annual report shall be reviewed by the Department of Education and the Department's response shall be sent to the Governor's Advisory Council.

25.2 All Advisory Panel meetings and agenda items shall be publicly announced prior to the meeting, and meetings must be open to the public.

25.3 The State shall reimburse the Panel for reasonable and necessary expenses for attending meetings and performing duties. The State may use Part B funds for this purpose.

Administrative Manual: Programs for Exceptional Children

## ~~I.G.8.SPECIAL PROGRAMS FOR THE HEARING IMPAIRED~~

~~a. The State Committee for the Hearing Impaired shall be established by the Director of the Delaware Programs for the Hearing Impaired and the Deaf/Blind in conjunction with the Team Leader of the Exceptional Children Team. The Committee shall consist of the following:~~

~~Audiologist: Sterek School for the Hearing Impaired  
Coordinator: Statewide Services for the Hearing~~

**Impaired**

Director: Delaware Programs for the Hearing Impaired

Principal: Sterek School for the Hearing Impaired

Program Director: Speech and Hearing Services,  
Division of Public Health

Psychologist(s): Sterek School for the Hearing Impaired

Representative(s): Public and Private Agencies (based  
upon the meeting agenda)

Representative(s): Local Education Agency (based upon  
the meeting agenda)

Representative(s): Public/Community

Specialist(s): Professionals skilled in specific, pertinent  
areas (based upon the meeting agenda)

Education Associate: Exceptional Children Programs  
(responsible for the Programs for the Hearing Impaired)

b. The Chairperson of the Committee shall be the  
Director of the Delaware Programs for the Hearing Impaired  
and the Deaf/Blind whose leadership role includes efforts  
toward Committee consensus.

e. Decisions of the Committee shall be determined by  
a majority vote of the members present if a consensus is  
unattainable.

d. The Chairperson shall set the time and place for  
meetings, which should be scheduled monthly, contingent  
upon agenda items.

e. The Committee shall provide a means for  
determining eligibility, program development, and  
coordination that is unique for the low incidence group of  
students with disabilities whose major disability is hearing  
impairment.

f. Specific responsibilities shall include:

(1) reviewing the status of all hearing impaired  
students in Delaware at the time of initial identification, and  
periodically as determined by the Committee;

(2) recommending appropriate services and/or  
programs necessary for hearing impaired students in  
Delaware;

(3) assisting local educational agencies and  
appropriate agencies in implementing State Committee  
recommendations; and

(4) developing and reviewing (annually) for  
dissemination, policies, and procedures for the conduct of  
the Committee.

g. The Committee shall discharge its responsibilities  
in accordance with P.L. 101-476 (IDEA) and appropriate  
sections of this Manual.

h. Complete minutes of the Committee meetings shall  
be sent to the Team Leader of the Exceptional Children  
Team.

i. A copy of pertinent portions of the review and  
recommendations pertaining to the identification, evaluation,  
and educational program and placement of each student and  
the provision for a free, appropriate public education to such  
students shall be sent to the appropriate parents and school

district or agency.

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**Educational Impact Analysis Pursuant  
To 14 Del. C., Section 122(d)****Delaware Student Testing Program****A. Type of Regulatory Action Requested**

Amendment to Existing Regulation

**B. Synopsis of Subject Matter of Regulation**

The Acting Secretary of Education seeks the approval of  
the State Board of Education to amend the regulation  
Delaware Student Testing Program by adding a new Section  
4.0 Individual Improvement Plan (IIP). The amendment  
defines when the use of the IIP is appropriate, what it shall  
include and how the IIP is prepared and approved. The IIP  
shall be on a form adopted by each school district.

**C. Impact Criteria**

1. Will the amended regulation help improve student  
achievement as measured against state achievement  
standards?

The amended regulation is part of an accountability  
program designed to improve student achievement.

2. Will the amended regulation help ensure that all  
students receive an equitable education?

The amended regulation addresses the Individual  
Improvement Plan that provides guidance in helping all  
students to improve their achievement.

3. Will the amended regulation help to ensure that all  
students' health and safety are adequately protected?

The amended regulation addresses academic  
achievement issues, not health and safety issues.

4. Will the amended regulation help to ensure that all  
students' legal rights are respected?

The amended regulation addresses academic  
achievement issues, not students' legal rights.

5. Will the amended regulation preserve the necessary  
authority and flexibility of decision makers at the local board  
and school level?

The amended regulation preserves the necessary  
authority and flexibility of decision makers at the local board  
and school level.

6. Will the amended regulation place unnecessary  
reporting or administrative requirements or mandates upon  
decision makers at the local board and school levels?

The amended regulation will not place unnecessary

reporting or administrative requirements or mandates upon decision makers at the local board and school levels.

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity?

The decision making authority and accountability for addressing the subject to be regulated will remain in the same entity.

8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies?

The amended regulation will be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies.

9. Is there a less burdensome method for addressing the purpose of the amended regulation?

The *Del. C.* requires the Department of Education to make regulations in this area.

10. What is the cost to the state and to the local school boards of compliance with the amended regulation?

The costs associated with this amended regulation are met through state accountability funds.

## AS AMENDED

### 101 Delaware Student Testing Program

1.0 General: Assessments created pursuant to the Delaware Student Testing Program shall be administered annually, on dates specified by the Secretary of Education, to students in grades 3, 5, 8, and 10, in the content areas of reading, mathematics and writing and to students in grades 4, 6, 8 and 11 in the content areas of social studies and science. All students in said grades shall be tested except that students with disabilities and students with limited English proficiency shall be tested according to the Department of Education's Guidelines for the Inclusion of Students with Disabilities and Students with Limited English Proficiency, as the same, may from time to time be amended hereafter.

2.0 Security and Confidentiality: In order to assure uniform and secure procedures, the Delaware Student Testing Program shall be administered pursuant to the Delaware Student Testing Program Coordinators Handbook, as the

same, may from time to time be amended hereafter.

2.1 Every district superintendent, district test coordinator, school principal, school test coordinator and test administrator shall sign the affidavit provided by the Department of Education regarding test security before, during and after test administration.

2.2 Violation of the security or confidentiality of any test required by the *Delaware Code* and the regulations of the Department of Education shall be prohibited.

2.3 Procedures for maintaining the security and confidentiality of a test shall be specified in the appropriate test administration materials. Conduct that violates the security or confidentiality of a test is defined as any departure from the test administration procedures established by the Department of Education. Conduct of this nature shall include, without limitation, the following acts and omissions:

2.3.1 duplicating secure examination materials;

2.3.2 disclosing the contents of any portion of a secure test;

2.3.3 providing, suggesting, or indicating to an examinee a response or answer to a secure test item or prompt;

2.3.4 changing or altering a response or answer of an examinee to a secure test item or prompt;

2.3.5 aiding or assisting an examinee with a response or answer to a secure test item or prompt;

2.3.6 encouraging or assisting an individual to engage in the conduct described above;

2.3.7 failing to report to an appropriate authority that an individual has engaged in conduct outlined above;

3.0 Levels of Performance: There shall be five levels of student performance relative to the State Content Standards on the assessments administered pursuant to the Delaware Student Testing Program. Said levels are defined and shall be determined as follows:

3.1 Distinguished Performance (Level 5): A student's performance in the tested domain is deemed exceptional. Students in this category show mastery of the Delaware Content Standards beyond what is expected of students performing at the top of the grade level. Student performance in this range is often exemplified by responses that indicate a willingness to go beyond the task, and could be classified as "exemplary." The cut points for Distinguished Performance shall be determined by the Department of Education, with the consent of the State Board of Education, using test data and the results from the Standard Setting process.

3.2 Exceeds the Performance Standard (Level 4): A student's performance in the tested domain goes well beyond the fundamental skills and knowledge required for students to Meet the Performance Standard. Students in this category show mastery of the Delaware Content Standards beyond

what is expected at the grade level. Student performance in this range is often exemplified by work that is of the quality to which all students should aspire, and could be classified as "very good." The cut points for Exceeds the Performance Standard shall be determined by the Department of Education, with the consent of the State Board of Education, using advice from a standard setting body. The standard setting body shall utilize a proven method for setting standards on test instruments that utilizes student work in making the recommendation.

3.3 Meets the Performance Standard (Level 3): A student's performance in the tested domain indicates an understanding of the fundamental skills and knowledge articulated in the Delaware Content Standards. Students in this category show mastery of the Delaware Content Standards at grade level. Student performance in this range can be classified as "good." The cut points for Meets the Performance Standard shall be determined by the Department of Education, with the consent of the State Board of Education, using advice from a standard setting body. The standard setting body shall utilize a proven method for setting standards on test instruments that utilizes student work in making the recommendation.

3.4 Below the Performance Standard (Level 2): A student's performance in the tested domain shows a partial or incomplete understanding of the fundamental skills and knowledge articulated in the Delaware Content Standards. Students who are Below the Performance Standard may require additional instruction in order to succeed in further academic pursuits, and can be classified as academically "deficient." The cut points for Below the Performance Standard shall be determined by the Department of Education, with the consent of the State Board of Education, using test data and the results from the Standard Setting process. Students at the upper end of this level are to be further sub-classified as Near the Performance Standard. Students who are Near the Performance Standard are those whose performance on the fundamental skills and knowledge articulated in the Delaware Content Standards is not yet sufficient to Meet the Performance Standard, but the student is near the threshold in relation to the Meets the Performance Standard category. The threshold for Near the Performance Standard shall be determined by the Department of Education, with the consent of the State Board of Education, using an error of measurement determined by the test data and the results from the standard setting process.

3.5 Well Below the Performance Standard (Level 1): A student's performance in the tested domain shows an incomplete and a clearly unsatisfactory understanding of the fundamental skills and knowledge articulated in the Delaware Content Standards. Students who are Well Below the Performance Standard have demonstrated broad deficiencies in terms of the standards indicating that they are

poorly prepared to succeed in further academic pursuits and can be classified as "very deficient." The cut points for Well Below the Performance Standard shall be determined by the Department of Education, with the consent of the State Board of Education, using test data and the results from the Standard Setting process.

#### 4.0 Individual Improvement Plan (IIP)

4.1 Beginning with the Spring 2000 DSTP results, students who score below Level 3 Meets the Standard, on the reading portion of the 3<sup>rd</sup>, 5<sup>th</sup> or 8<sup>th</sup> grade Delaware Student Testing Program or the mathematics portion of the 8<sup>th</sup> grade Delaware Student Testing Program shall have an Individual Improvement Plan prepared by school personnel and signed by the teacher(s), principal or designee and a parent or legal guardian of the student.

4.1.1 The Individual Improvement Plan shall be on a form adopted by the student's school district. The IIP shall be placed in a student's cumulative file and shall be updated based on the results of further assessments. Such assessments may include further DSTP results as well as local assessments, classroom observations or inventories. For students with an Individualized Education Program (IEP), the IEP shall serve as the Individual Improvement Plan (IIP).

4.1.2 The Individual Improvement Plan shall at a minimum identify a specific course of study for the student that the school will provide and the academic improvement activities that the student shall undertake to help the student progress towards meeting the standards. Academic improvement activities may include mandatory participation in summer school, extra instruction and/or mentoring programs.

4.1.3 The Individual Improvement Plan shall be prepared by school personnel and signed by the teacher(s), principal or designee and the parent or legal guardian of the student. A parent or the student's legal guardian must sign and return a copy of the student's Individual Improvement Plan to the student's school by the end of the first marking period.

4.2 Any dispute concerning the contents of a student's IIP shall be decided by the school district's superintendent or designee.

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### **Educational Impact Analysis Pursuant To 14 Del. C., Section 122(d)**

### **Educational Programs for Students with Limited English Proficiency**

#### **A. Type of Regulatory Action Requested** Amendment to Existing Regulation

## B. Synopsis of Subject Matter of Regulation

The Acting Secretary of Education seeks the approval of the State Board of Education to amend the regulations Educational Programs for Students with Limited English Proficiency, Pages A-16 – A-18 in the *Handbook for K-12 Education*. The amended regulations are substantially changed and provide specific directions to local school districts as to the services that they must provide to students with limited English proficiency. The regulations define a student with limited English proficiency, provide an identification procedure, define a program for these students and set forth a reclassification procedure. The regulations also provide directions for monitoring student progress, program evaluation, reports for DOE and communication with language minority parents or guardians. Finally the regulations state that language minority students are to be a part of the Delaware Student Testing Program (DSTP).

## C. Impact Criteria

1. Will the amended regulations help improve student achievement as measured against state achievement standards?

The amended regulations are designed to assist limited English proficient students in improving their English skills and improving their achievement in all content areas.

2. Will the amended regulations help ensure that all students receive an equitable education?

The amended regulations are designed to provide limited English proficient students with an equal opportunity to an education.

3. Will the amended regulations help to ensure that all students' health and safety are adequately protected?

The amended regulations address educational opportunity, not health and safety issues.

4. Will the amended regulations help to ensure that limited English proficient students' legal rights are respected?

The amended regulations will insure that legal rights of students with limited English proficiency are protected.

5. Will the amended regulations preserve the necessary authority and flexibility of decision makers at the local board and school level?

The amended regulations set the parameters around required services for limited English proficient students and still preserve the necessary authority and flexibility at the local board and school level.

6. Will the amended regulations place unnecessary reporting or administrative requirements or mandates upon

decision makers at the local board and school levels?

The amended regulations do not require additional reporting but may require additional administrative decisions at the local board and school levels pertaining to instruction for students with limited English proficiency.

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity?

The decision making authority and accountability for addressing the subject to be regulated will remain in the same entity?

8. Will the amended regulations be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies?

The amended regulations will be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies?

9. Is there a less burdensome method for addressing the purpose of the regulations?

The Office of Civil Rights requires that the Department of Education make such regulations.

10. What is the cost to the state and to the local school boards of compliance with the regulations?

There is an additional cost to local school boards for compliance with the regulations and funds are made available through the Academic Excellence Units and Extra Time for Students grants. The statewide English language proficiency assessment will be purchased by the Department of Education.

## FROM THE HANDBOOK FOR K-12 EDUCATION

### ~~I. F. 3. LIMITED — ENGLISH — PROFICIENCY PROGRAMS (BILINGUAL EDUCATION)~~

~~a. The State Board of Education believes in the following program goals for students of limited English proficiency (LEP):~~

~~(1) the assurance of equal educational opportunity to every eligible student of limited English proficiency;~~

~~(2) the enabling of limited English proficient students to continue to develop academically while achieving competence in the English language in order to facilitate their successful integration into regular classrooms and to allow them to meet grade promotion and graduation standards.~~



**b. Eligibility**

Eligibility for instructional programs designed for limited English proficient students should be based on the following criteria:

(1) A student who by reason of foreign birth or ancestry speaks a language other than English, or who has been identified by a valid English language assessment instrument as a pupil of limited English proficiency, is eligible to receive a program of bilingual education or English as a Second Language.

(2) The parents or legal guardians of limited English proficient children identified for enrollment in such programs should be informed of the reasons for their child's selection, the native language used in the program, and the alternative educational programs in the local district.

(3) Parental involvement in their children's instructional program should be encouraged, including the option of deciding whether or not to enroll their children in such programs.

**e. Instructional Programs**

(1) Instructional programs for pupils of limited English proficiency should not exceed three years, which period may be extended by the State Superintendent with respect to individual pupils, upon application by the appropriate school authorities.

(2) Where appropriate and practicable, transitional bilingual education programs may be provided to meet the needs of qualified pupils in order to facilitate their future integration into the regular school curriculum. Where feasible, the bilingual education program may be provided on a cooperative, multi school, multi district or regional basis.

(3) Limited English Proficiency students bring to their schools and communities languages and cultural heritages that enrich the curriculum and school setting. Therefore, it is important to provide all children with opportunities for gaining an understanding of their own culture as well as the cultures of others.

(4) Bilingual programs should be designed to:

(a) provide content instruction for children of limited English proficiency using the child's native language and English;

(b) provide native language instruction; and

(c) provide English as a Second Language (ESL) instruction.

(5) The State Board of Education recognizes ESL only programs as currently the best solution in answering the needs of school districts with small numbers of children from nations with uncommon languages or with small numbers of children speaking the same non-English language. ESL instruction should include the four language skills areas: listening/comprehension, speaking,

reading, and writing and assist in the learning of content areas through structured monolingual instruction in English.

(6) Instruction in content area subjects (mathematics, science, and social studies) should be equivalent in scope to the curriculum required by the Department of Public Instruction and the local school district. Pupils taught in their native language are expected to progress in the content areas taught at the same rate as their English-speaking peers are expected to progress when taught in English.

(State Board Approved February 1987)

**AS AMENDED****Educational Programs for Students with Limited English Proficiency**

1.0 General. Each district shall identify upon enrollment every student with limited English proficiency, and each district shall make available to every student who has been determined to be eligible for limited English proficiency services a program of instruction until such time as the student becomes fully proficient in English in accordance with 5.0 below.

2.0 Student with Limited English Proficiency Defined. For the purpose of this section, a student with limited English proficiency is one who, by reason of foreign birth or ancestry, speaks a language other than English, and either comprehends, speaks, reads or writes little or no English, or who has been identified as a pupil of limited English proficiency by a valid English language proficiency assessment approved by the Department of Education for use statewide.

3.0 Determination of Eligibility for Limited English Proficiency Programs. Each school district shall implement a system for the timely and reliable identification of students with limited English proficiency and determination of such students' eligibility for limited English proficiency programs. This system shall include a home language survey and an assessment of English language proficiency.

3.1 A home language survey or the questions contained in the survey shall be administered as part of the registration process for all registering students and shall elicit from the student's parent or guardian the student's first acquired language and the language(s) spoken in the student's home.

3.2 Any student for whom a language other than English is reported on the home language survey as the student's first acquired language or as a language used in the student's home shall be administered an English language proficiency assessment. Such assessment shall be conducted in conformance with the following standards:

3.2.1 the assessment shall be based on a

standardized instrument, validated for this purpose and approved by the Department of Education for use statewide;

3.2.2 the assessment shall measure English proficiency in reading, writing, speaking and oral comprehension, except that reading and writing proficiency will generally not be assessed for students below grade 2;

3.2.3 the assessment shall be conducted by qualified personnel trained in the administration of the assessment instrument;

3.2.4 the assessment shall be conducted as soon as practicable, but not later than 25 school days after enrollment.

3.3 Any student who achieves a score on the English language proficiency assessment that is lower than the eligibility cut-off score in reading, writing, or oral English established by the Department of Education shall be entitled to a program of instruction for students with limited English proficiency. Reading and writing proficiency will not be considered for students below grade 2.

3.4 For each student enrolled in the 2000-2001 school year, each district shall conduct a home language survey, to the extent practicable, of every enrolled student as in 3.1 and, as applicable pursuant to 3.2, an English language proficiency assessment in accordance with 3.2.1 through 3.2.3. Beginning with the 2000-2001 school year, each district shall conduct such a home language survey, and as appropriate, an English language proficiency assessment of every new student at the time of enrollment in a school.

4.0 Specially Designed Program. Each enrolled student who is eligible for services pursuant to 3.3 above, shall be provided with a program of instruction for students with limited English proficiency.

4.1 A program of instruction for students with limited English proficiency shall include: formal instruction in English language development; and instruction in academic subjects which is designed to provide students with limited English proficiency with access to the District's curriculum.

4.2 In selecting program(s), each district may choose from a variety of programs that are research-based and best practice in the education of limited English proficient students. Beginning with the 2001-2002 school year, programs of instruction for students with limited English proficiency are to be reviewed by the Department of Education. Such programs include bilingual programs as well as programs that are delivered exclusively in English.

4.2.1 Bilingual programs shall include:

4.2.1.1 standards-based instruction for students with limited English proficiency, using the student's native language and English;

4.2.1.2 instruction in reading and writing in the student's native language; and

4.2.1.3 English as a second language instruction.

4.2.2 Programs delivered exclusively in English shall include:

4.2.2.1 standards-based instruction for students with limited English proficiency, using English in a manner that takes into account the student's level of English proficiency;

4.2.2.2 instruction which builds on the language skills and academic subject knowledge the student has acquired in his or her native language; and

4.2.2.3 English as a second language instruction.

4.2.3 Programs shall be implemented consistent with the goals of prompt acquisition of full English proficiency.

4.2.4 Programs shall include instruction in academic subjects which is equivalent in scope to the instruction that is provided to students who are not limited in English proficiency.

4.2.5 Instruction shall be delivered by teachers who meet Department of Education certification requirements and who are trained in the delivery of instruction to students with limited English proficiency.

4.2.6 Where a bilingual program is offered, the parent or guardian of an eligible student may opt for the eligible student to be served in a program for students with limited English proficiency carried out exclusively in English.

5.0 Reclassification Procedures. At least once each school year, each eligible student shall be considered for reclassification as a fully English proficient student who no longer needs a program for students with limited English proficiency.

5.1 Reclassification shall include an assessment of English proficiency in accordance with the standards in 3.2.1 - 3.2.4 above.

5.2 Any student who achieves a score on the English language proficiency assessment which is lower than the eligibility cut-off score in reading, writing, or oral English established by the Department of Education shall be regarded as a student with limited English proficiency and shall continue to be eligible for a program of instruction for students with limited English proficiency. Reading and writing proficiency will not be considered for students below grade 2.

5.3 Any student who achieves a score on the English language proficiency assessment at or above the eligibility cut-off score in reading, writing, and oral English established by the Department of Education shall be reclassified as fully English proficient and considered ineligible for a program of instruction for students with limited English proficiency. Reading and writing proficiency will not be considered for students below grade 2.

5.4 Before removing any student from a program for

students with limited English proficiency, the district shall assess the student's level of performance in academic subject areas. Any reclassified student found to have incurred academic deficits while in the program for students with limited English proficiency shall be provided with supplemental instructional services in the relevant subject areas.

6.0 Monitoring Performance of Ineligible and Reclassified Students. For at least two school years following the determination of ineligibility or reclassification, a district shall monitor the academic performance of each student who has been: assessed pursuant to 3.2 above and found ineligible for a program; or reclassified as fully English proficient pursuant to 5.3 above. Students who experience academic performance problems during this period shall, based on further assessment, be considered for entry/reentry into a program of instruction for students with limited English proficiency and shall be provided with supplemental instructional services as necessary and appropriate.

7.0 Program Evaluation. Each district shall prepare an annual evaluation of its program(s) for students with limited English proficiency. Such evaluation shall be available for review upon request and shall be submitted to the Department of Education beginning with the 2001-2002 school year. This evaluation may be part of the district's annual evaluation required for other district programs. At a minimum, this program evaluation shall:

7.1 consider the validity of the assessment processes carried out pursuant to 3.2 and 3.3, and 5.1, 5.2, 5.3, and 5.4 above, in terms of predicting student success in the regular instructional program;

7.2 consider the effectiveness of each program of instruction for students with limited English proficiency in achieving the goals and standards in 4.2. above; and

7.3 describe any modifications that have been proposed or implemented, based on the evaluation data.

8.0 Student Information Reports. Each district shall provide the Department of Education annually with the language background, the current English proficiency level of each LEP student enrolled in the district, and the type of program in which the LEP student receives services, and related information. Such reporting shall take place in a manner prescribed by the Department of Education. A district shall provide such other information as the Department of Education may request, in order to assure adherence to this regulation.

9.0 Communications with Language Minority Parents/Guardians. Each district shall ensure that communications with parents/guardians, including notices of eligibility for a program for students with limited English proficiency,

notices about the student's educational performance and progress in such programs, and school information that is made available to other parents/guardians, are provided to each language minority parent/guardian in a language the parent/guardian can understand to the extent practicable.

10.0 Accountability. Students with limited English proficiency and students reclassified as fully English proficient shall be included in the Delaware Student Testing Program (DSTP). Alternative assessment measures may be used as provided in Department of Education guidelines, including the *Guidelines for the Inclusion of Students with Disabilities and Students with Limited English Proficiency*, as the same may, from time to time, be amended hereafter.

10.1 Differential analysis of the results of the DSTP and any alternative assessment measures shall be conducted on the performance of students with limited English proficiency and students reclassified as fully English proficient. Such data shall be made available with other accountability data for each district and the state as a whole.

10.2 The Department of Education and each district shall ensure that consequences and benefits under Delaware's system of statewide accountability are dispensed in a manner that is equitable to students with limited English proficiency and students reclassified as fully English proficient. This shall be based on assessments which accurately measure the student's performance in the area being assessed and are reflective of the curriculum which was delivered to the student.

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### **Educational Impact Analysis Pursuant To 14 Del. C., Section 122(d)**

#### **Supportive Instruction (Homebound)**

**\* PLEASE NOTE THIS IS A REPROPOSAL.**

#### **A. Type of Regulatory Action Requested** Amendment to Existing Regulation

#### **B. Synopsis of Subject Matter of Regulation**

The Acting Secretary of Education seeks the approval of the State Board of Education to further amend the regulation Supportive Instruction (Homebound) from pages A-11 to A-13 in the *Handbook for K-12 Education*. The regulation had been previously amended to specify when services could begin for pregnant students who qualify, to address the issue of students with 504 plans, to update and clarify the language and to remove the cap on the number of hours of supportive instruction that can be provided at each grade level leaving only a minimum requirement. This amendment corrects the oversight in Section 3.1.1 (on minimum hours) by adding that it is a "weekly minimum."

1. Will the amended regulation help improve student achievement as measured against state achievement standards?

The amended regulation will provide additional academic support to homebound students.

2. Will the amended regulation help ensure that all students receive an equitable education?

The amended regulation addresses supportive instructional services, which could be interpreted as a type of equity issue.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected?

The amended regulation addresses supportive instruction, not health and safety issues.

4. Will the amended regulation help to ensure that all students' legal rights are respected?

The amended regulation addresses supportive instruction, not student's rights.

5. Will the amended regulation preserve the necessary authority and flexibility of decision makers at the local board and school level?

The amended regulation will preserve the necessary authority and flexibility of decision makers at the local board and school level.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels?

The amended regulation will not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity?

Decision making authority and accountability for addressing the subject to be regulated will remain in the same entity.

8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies?

The amended regulation will be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social

studies.

9. Is there a less burdensome method for addressing the purpose of the amended regulation?

The regulation is needed to insure that these services are available and amending the regulation is needed for clarity.

10. What is the cost to the state and to the local school boards of compliance with the amended regulation?

There is no additional cost to the state or to the local school boards for compliance with this amended regulation.

## FROM THE HANDBOOK FOR K-12 EDUCATION

### ~~I. E. 2. SUPPORTIVE INSTRUCTION (HOMEBOUND)~~

#### ~~a. Definition~~

~~Supportive instruction is an alternative educational program provided at home, hospital or related site. For non-handicapped students hospitalized or at home for a sudden illness or accident considered to be of a temporary nature, procedures for eligibility shall be limited to medical certification that the student cannot attend school. For handicapped students, services shall be provided according to the Administrative Manual: Programs for Exceptional Children, and shall be processed under the district's special education authority.~~

#### ~~b. Eligibility~~

~~To be eligible for supportive instruction as a non-handicapped student, the student shall be enrolled in the local school district and:~~

~~(1) if absence is due to a medical condition, be certified by a physician's statement where absence will be for two weeks or longer; or~~

~~(2) if absence is necessary due to severe adjustment problems, be certified by a staff conference, including a psychologist or psychiatrist; or~~

~~(3) if for transitional in-school program, be certified by staff conference.~~

~~e. Pregnancy complicated by illness or other abnormal conditions as certified by a physician may be considered a valid reason for supportive instruction; however, a normal pregnancy is considered a condition for which other State supported instructional programs administered by local districts should be adequate.~~

#### ~~d. Implementation~~

~~Supportive instruction for non-handicapped students will begin as soon as administratively feasible and may continue upon return to school only in those exceptional cases where it is determined that the student needs a transitional program to guarantee a successful return to the school program. Such unusual cases shall be referred to the Department of Public Instruction, for~~

approval.

~~(1) The following weekly schedule of hours of instruction will be supported by State funds to the extent that appropriations allow:~~

~~Out of School~~

~~Grades K-5 Minimum 3 hours Maximum 5 hours~~

~~Grades 6-8 Minimum 5 hours Maximum 7 hours~~

~~Grades 9-12 Minimum 5 hours Maximum 10 hours~~

~~In School~~

~~Grades K-12 No minimum Maximum 3 hours~~

~~(2) State funded instruction shall not exceed three visits per week. Summer instruction is permitted for a student who, as determined by the student's teachers and principal, needs the instruction to complete course work or to maintain a level of instruction in order to continue in a school program the following September.~~

~~(3) A home-to-school telephone instructional system may be provided when economically feasible and educationally advisable as determined by the local district administration. Negotiations for installation, removal, and costs shall be between the telephone company and the local school district. (Payable from allocations for homebound instruction.) When a home-to-school telephone instructional system is provided, the coordinating teacher at the elementary level, or, in the case of departmentalized instruction, the teacher of each basic subject area may be authorized to visit the home for one hour per week to give assistance.~~

~~(4) The student's curriculum shall be followed to the maximum extent possible.~~

~~(5) When a student is in a departmentalized program, more than one teacher may be assigned.~~

~~(6) Teachers providing home, hospital, and/or supportive instruction for a student shall be paid no less than the minimum hourly rate as set by the Department of Public Instruction.~~

~~(7) A specific amount is allocated to each district for operation of this program, but nothing in these regulations shall be construed to prevent a local school district from providing additional hours of instruction, or paying a higher hourly rate for teachers' services so long as the extension of services is supported by local or Division III funds. Summer instruction may be provided with State funds, subject to the availability of funds and approval by the Department of Public Instruction. Funds for teacher travel in the provision of home, hospital, or supportive instruction are to be provided by the local school district subject to reimbursement annually upon request to the Department of Public Instruction.~~

#### **AS AMENDED**

#### **Supportive Instruction (Homebound)**

1.0 Definition: Supportive instruction is an alternative educational program provided at home, in a hospital or at a related site for students temporarily at home or hospitalized for a sudden illness, injury, episodic flare up of a chronic condition or accident considered to be of a temporary nature.

1.1 Procedures for eligibility shall be limited to appropriate certification that the student cannot attend school.

1.2 Services for children with disabilities as defined in the Individuals with Disabilities Act (IDEA) and the State Department of Education's regulations on Children with Disabilities shall be provided according to the *Administrative Manual: Special Education Services*, and shall be processed under the district's special education authority. Nothing in this regulation shall prevent a district from providing supportive instruction to children with disabilities in a manner consistent with the Individuals with Disabilities Education Act (IDEA) and the Administrative Manual.

1.3 Nothing in this regulation shall alter a district's duties under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act to students who are qualified individuals with disabilities. Nothing in this regulation shall prevent a district from providing supportive instruction to such students.

2.0 Eligibility: A student enrolled in a school district is eligible for supportive instruction when the school receives the required certification that an accident, injury, sudden illness or episodic flareup of a chronic condition will prevent the student from attending school for at least ten (10) school days.

2.1 A physician must certify absences due to a medical condition.

2.2 Absences due to severe adjustment problems must be certified by a psychologist or psychiatrist and confirmed through a staff conference.

2.3 A physician must certify absences due to pregnancy complicated by illness or other abnormal conditions.

2.3.1 Students do not qualify for supportive instruction for normal pregnancies unless there are complications.

2.3.2 Students who remain enrolled in school are eligible for supportive instruction during a postpartum period not to exceed six weeks. Postpartum absences must be certified by a physician.

2.4 When the request for supportive instruction is for transitional in-school programs immediately following supportive instruction provided outside school, the request must be certified through a staff conference.

3.0 Implementation: Supportive instruction for students shall begin as soon as the certification required by 2.0 is received and may continue upon return to school only in

those exceptional cases where it is determined that the student needs a transitional program to guarantee a successful return to the school program as in 2.4.

3.1 Supportive instruction shall adhere to the extent possible to the student's school curriculum and shall make full use of the available technology in order to facilitate the instruction.

3.1.1 The school shall provide a minimum of 3 hours of supportive instruction each week of eligibility for students K-5th grade, and a minimum of five hours each week of eligibility for students 6-12th grade. There is no minimum for in-school transition.

3.1.2 Nothing in this regulation shall prevent a school district from providing additional hours of supportive instruction to eligible students from either its Academic Excellence allotment or other available funding sources.

3.2 Summer instruction is permitted for a student who is otherwise eligible for supportive instruction and as determined by the student's teachers and principal, needs the instruction to complete course work or to maintain a level of instruction in order to continue in a school program the following school year.

## DEPARTMENT OF FINANCE

### DIVISION OF REVENUE

#### DELAWARE STATE LOTTERY OFFICE

Statutory Authority: 29 Delaware Code, Section 4805(a) (29 Del.C. 4805(a))

### Delaware Lottery Rules and Regulations

1. Amend the existing Introduction to provide that, under the Lottery's enabling legislation, not less than 30% of gross sales are to be paid to the State's General Fund. The Lottery further proposes to amend the existing Introduction to delete the reference to agent commissions.

2. Amend Section 13 (c)(d) to provide that no employee of an instant ticket supplier or on-line games computer system can purchase tickets in Lottery games.

3. Amend Section 16(c) on Determination of Prize Winners to delete the redundant language "featuring the revised prize structure".

4. Amend Section 18(a) on Place of Claims to provide that prizes are claimed at agent's locations or the Division of Revenue, and that prizes greater than \$5,000 must be claimed at the Lottery Office.

5. Amend Section 18(e) on Lottery Validation to clarify that all winning tickets are validated. Amend 18(e) to further clarify that all tickets are void if altered torn, misprinted, illegible, or damaged unless the Director is satisfied the ticket is genuine.

6. Amend Section 19 on Ownership of Lottery Tickets

to clarify that the Lottery will make payment to the person who signs the back of the ticket unless there is a conflict with the information on the claim form.

7. Amend Section 29 on Fingerprinting Procedures to clarify the process for the submission of fingerprint information from retailer license applicants.

### Video Lottery Regulations

1. The Lottery proposes a new section 14.1 through 14.10 to set forth the procedure used by the Lottery and the Delaware State Police for the fingerprinting of licensees and employees. The Lottery proposes to renumber the existing section 14.0-Severability to be a new section 15.0.

The Lottery will receive written public comments from July 1, 2000 through July 30, 2000. Written comments should be sent to Wayne Lemons, Director-Delaware State Lottery Office, 1575 McKee Road, Suite 102, Dover, DE 1904. Copies of the proposed rules can be obtained from the Commission office at the above address.

### Delaware State Lottery Rules and Regulations

#### Introduction

The Delaware State Lottery ("Lottery") was established by the enactment of Chapter 348, Volume 59, of the Laws of Delaware. This chapter created the State Lottery Office ("Lottery Office") and the position of Director of the State Lottery Office ("Director").

The Lottery Law, 29 Delaware Code, Chapter 48, directs the Secretary of Finance to appoint, with written approval of the Governor, a Director of the State Lottery Office.

All monies received from the sale of lottery tickets are accounted for to the State Treasurer and receipts are placed into a special account known as the State Lottery Fund.

At least forty-five percent (45%) of gross sales is distributed as prizes to the holders of winning tickets. Not less than thirty percent (30%) of gross sales is paid to the State of Delaware General Fund. ~~Five percent (5%) may be paid to Agents as sales commissions.~~ The remaining twenty percent (20%) shall pay Lottery operating expenses with any unused portion of this amount reverting to the State General Fund.

The following regulations are adopted pursuant to the State Lottery Law, 29 Delaware Code Chapter 48, the provisions of which are hereby incorporated by reference. These regulations apply to the operations of the lottery system established under title 29, chapter 48, except for video lottery operations. Video lottery operations will continue to be administered pursuant to the Video Lottery Regulations previously issued by the Director on December 31, 1994, and any subsequent amendments.

The Lottery Office is located at McKee Business Park,

Suite 102, 1575 McKee Road, Dover, DE 19904-1903. Copies of these regulations can be obtained from the Lottery Office. The Lottery's phone number is (302)739-5291.

**(1) Definitions**

(a) "Act" or "Law" means the Delaware State Lottery Law, Chapter 348, Volume 59, of the Laws of Delaware, as may be amended from time to time.

(b) "Office" or "Lottery Office" means the State Lottery Office created in the Act.

(c) "Bank" means and includes all banks, banking associations, and trust companies organized under the authority of this State or the United State whose principal place of business is within the State.

(d) "Director" means the Director of the State Lottery Office or Acting Director as stipulated in the Act.

(e) "Licensee" or "Agent" means a person who has been licensed to sell lottery tickets.

(f) "Lottery" or "State Lottery" means the lottery established and operated pursuant to the Act.

(g) "Lottery Property" means and includes but is not limited to any Agent's License, unsold tickets, forms, promotional materials or any other tool issued to the agent by the State Lottery Office for the purpose of selling tickets.

(h) "Person" means and includes an individual, association, corporation, club, trust, estate, society, company, joint stock company, receiver, trustee, assignee, referee, or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of individuals. "Person" shall also mean and include all departments, commissions, agencies, and instrumentalities of the State, including counties and municipalities and agencies and instrumentalities thereof.

(i) "Regulations" means the regulations promulgated by the Lottery Office for the operation of the lottery.

(j) "Ticket" means a lottery ticket issued by the State Lottery Office for sale to the general public.

**(2) Director**

The Director shall have the power, duties and responsibilities as set out in the enabling legislation, Chapter 348, Volume 59, Laws of Delaware, and any subsequent amendments.

**(3) Licensing of Agents****(a) Application**

Any person interested in obtaining a license as an Agent must first file an "Application for Lottery Sales Agent's License" with the Director of the State Lottery Office. The applications, as well as other documents submitted to the Lottery on behalf of the applicant for purposes of determining the qualifications of the applicant, shall be sworn to or affirmed before a notary public, or

designated Lottery employee.

**(b) Eligibility for License**

No license as an Agent to sell lottery tickets shall be issued to any person to engage in business primarily as a lottery sales Agent. Before issuing such license, the Director shall consider such factors, including but not limited to:

1. The financial responsibility and security of the person and his business activity. The applicant must be willing to grant to the Lottery the right to perform a routine credit check such as any other supplier might require before extending credit. He or she must also be willing to grant to the Lottery the right to perform a security investigation to include the release of any criminal history by the State Bureau of Identification and the Federal Bureau of Identification.

2. The honesty and integrity of the applicant.

3. The accessibility of his place of business or activity to the public.

4. The sufficiency of existing licensees to serve the public convenience.

5. The volume of expected sales.

6. The veracity of the information supplied in the "Application for Lottery Sales Agent's License."

7. The results of the applicant's state and federal criminal history record check.

8. The extent to which the applicant is known to associate with persons of nefarious backgrounds or disreputable character such that the association could adversely affect the general credibility, security, integrity, honesty, fairness, or reputation of the Lottery.

**(c) Ineligibility of Minors**

No person under the age of twenty-one (21) shall be licensed as an Agent. Nothing herein shall be construed to mean an employee must be twenty-one (21) to sell tickets within the licensed establishment.

**(d) Issuance of License**

1. The Director shall, in accordance with the provisions of the Act and these Regulations, license such persons as Agents to sell lottery tickets who, as in his option, will best serve the public convenience and promote the sale of tickets.

2. The issuance of a license shall signify agreement by the agent to abide by all provisions of the Lottery regulations.

3. An Agent's license shall be reviewed annually on or about the anniversary date of the original permanent issue.

4. The Director reserves the right to require a surety bond from every licensed Agent in such amount consistent with his determination of the financial stability of said Agent so as to avoid any monetary loss to the State because of the Agent's activities in the sale of lottery tickets.

**(e) License to be Displayed**

1. Every Agent shall prominently display his

license in an area visible to the general public.

2. In addition, the Agent decal shall be mounted on a prominent public window of the Agent's premises.

3. The Agent shall maintain and display all promotional material in conjunction with ticket sales in accordance with instructions issued by the Lottery Office.

(f) Sale of Lottery Tickets at Specific

Locations Licensed and Nontransferability

1. The sale of lottery tickets shall be made only pursuant to a lottery Agent's license at a specific location named therein.

2. No other sales shall be permitted, except as provided in the Act or these Regulations.

(g) Sale and/or Transfer of Ownership of Specific Licensed Locations

1. All licensed agents are required to notify the Lottery Office of a pending sale of a specific licensed location. This requirement of notice includes ownership change in corporations as well as individual ownership change affecting a specific licensed location. No license may be transferred, assigned, or pledged as collateral. All licenses to sell Lottery tickets are nontransferable.

2. Any change in ownership of a specific licensed location requires a new Agent Application process. Change of ownership does not automatically guarantee the granting of a License to the new ownership. In the event of the death of a licensee, the Lottery will suspend operations at the Agent's location if and until a new Agent Application is approved for that location.

(h) Liability of Lottery Office and State of Delaware

It is agreed by the Agent that he shall hold the Lottery Office, all Lottery employees, and the State of Delaware harmless from any liability arising in connection with conducting lottery ticket sales.

## (4) Revocation of Licenses

(a) The license is evidence of an agency revocable at will by the Director. The Director may revoke without notice or a hearing, the license of any Agent who violates the Act or any rule or regulation promulgated pursuant to the Act. However, if the Director does revoke a license without notice and an opportunity for a hearing, the Director shall by appropriate notice afford the person whose license has been revoked an opportunity for a hearing within thirty (30) days after the revocation order has been issued. The notice shall also specify the intended reasons for the revocation. As a result of any such hearing, the Director may confirm his action revoking the license or he may order the restoration of such license.

An Agent's license may be suspended, revoked, or its renewal rejected for any one or more of the following reasons:

1. Whenever the Agent knowingly uses false or misleading information in obtaining the license.

2. Whenever the Agent violates any of the provisions of the State Lottery Law or any regulations, directives, or instructions promulgated or issued thereunder.

3. Whenever the Agent's business address is changed.

4. Whenever the Agent does not display lottery point-of-sale material in a manner which is readily seen by and available to the public, including failure to make tickets available at points-of-sale within the licensed premises which the Director determines are necessary to the interest of the public and the lottery.

5. Whenever a Agent commits an act which seriously impairs his reputation for honesty and integrity.

6. Whenever the Agent has been convicted of a crime.

7. Whenever the Agent has been found guilty of any fraud or misrepresentation in any connection.

8. Whenever the Agent's experience, character, and general fitness are such that his participation as a lottery sales Agent is inconsistent with the public interest, convenience and necessity, or the security of the Lottery operations.

9. Whenever the Agent is delinquent in making required accounting or fails to pay weekly all monies owed to the State.

10. Whenever the Agent fails to take reasonable security precautions with regard to the handling of lottery tickets and other materials.

11. Whenever the Agent sells a lottery ticket for an amount less than or greater than its stated price.

12. Whenever the Agent fails to report information required by these regulations.

Whenever the Agent sells lottery tickets to known third-party ticket resalers or enters computer-generated betting slips from third-party ticket resalers for the sale of lottery tickets.

(b) Procedure for Revocation or Rejection of Renewal of License

1. The Director may, for any of the reasons stated above, revoke or reject the renewal of an Agent's license.

2. Immediately upon notice of revocation or rejection of renewal of an Agent's license, said Agent shall suspend the sale of all lottery tickets and shall forthwith comply with the provisions of these Regulations for procedures upon suspension of license, unless otherwise notified by the Director.

## (5) Procedure Upon Suspension or Revocation of License

(a) The license of any Agent may be temporarily suspended by the Director without prior notice, or having a hearing, pending further investigation, settlement of delinquent account, or prosecution.

(b) Upon suspension or revocation of an Agent's



license for any reason whatsoever, the Agent shall meet with the Director or his designee on a date set by the Director for the purpose of rendering his final lottery accounting. This date shall be not more than seven (7) days from the date the notice of suspension or revocation was received by the Agent. Upon the Agent's failure to meet with the Director or his designee on or before the date set by the Director, the Director may take steps to impose such penalties and to enforce the powers of his Office against the delinquent Agent, his agents, or representatives, as may be provided by law and these Regulations.

(c) Upon receipt of notice of suspension, revocation, or rejection, the Agent may within fourteen (14) days of receipt of said notice make written request to the Director for a hearing to show cause why his license should not be revoked. The written request must contain:

(1) A clear and concise assignment of each error which the licensee alleges to have been committed in the tentative determination to suspend or revoke the license. Each assignment of error should be listed in a separately numbered paragraph.

(2) A clear and concise statement of the facts on which the licensee relies in support of each assignment of error.

(3) A prayer setting forth the relief sought.

(4) The signature of the licensee or an officer authorized to request the hearing.

(5) A verification by the licensee or counsel for the licensee that the statements contained in the petition are true.

The Director shall provide an opportunity for the petitioner to be heard within thirty (30) days of receipt of the request for a hearing.

(d) The Director may appoint a hearing officer within a reasonable time for the purpose of hearing suspension or revocation cases. Said officer shall hear the case, and within thirty (30) days of the conclusion of said hearing, submit to the Director with a copy to the parties of record, a recommended report. Said report shall contain findings of facts and conclusions of law to support a recommendation to support the revocation, suspension, or rejection, or to support the relicensing of the Agent involved. The parties of record upon receipt of their copy of the recommended report shall have ten (10) days in which to file exceptions, objections and replies to the Director. The Director, within fourteen (14) days, will advise the Agent of his final decision. The Director's decision shall be final.

(e) The licensee may appear individually, by legal counsel, or by any other duly authorized representative. In the absence of the licensee, written evidence of a representative's authority shall be presented to the hearing officer in a form satisfactory to the hearing officer.

(f) The licensee or his duly authorized representative, may, with the approval of a hearing officer, waive the hearing and agree to submit the case for decision on the

record, with or without a written brief. Such a waiver or agreement shall be in writing and placed in the record.

(g) The licensee shall be given the opportunity for argument within the time limits fixed by the hearing officer following submission of the evidence. The hearing officer, upon request of licensee, may accept briefs in lieu of argument. The briefs shall be filed within ten days after the hearing date or within such time as fixed by the hearing officer.

(h) The hearing officer may admit any relevant evidence, except that he shall observe the rules of privilege recognized by law. The hearing officer may exclude any evidence which is irrelevant, unduly repetitious, or lacking a substantial probative effect.

(i) A record shall be made of all hearings and all witnesses shall be sworn and subject to cross examination.

#### **(6) Erroneous or Mutilated Tickets**

Unless the Director is satisfied that a mutilated lottery ticket is genuine, no credit or prize will be issued to the holder of said ticket. Tickets misprinted due to machine error shall be returned to the Lottery and the Agent's account shall be credited. If a ticket misprinted due to machine error (as determined by Lottery internal procedures) has been sold, the ticket holder shall be reimbursed for the cost of the ticket. Such tickets shall not be eligible for any prize. The Director may require Agents to comply with such directives as he deems necessary for erroneous or mutilated tickets received by an Agent.

#### **(7) Agent's Compensation**

All licensed Agents shall be entitled to a commission of a percentage of the price of each ticket sold by them as provided by the Director. In addition, each Agent shall be entitled to such bonus(es) as may be deemed desirable by the Director.

#### **(8) Special Agent Licensing**

The Director may license special lottery Agents, subject to such conditions or limitations as the Director may deem prudent and which is consistent with the laws of the State of Delaware and these Regulations. These limitations or conditions may include, but are not limited to:

(a) Length of license period.

(b) Hours or day of sale.

(c) Location of sale.

(d) Specific persons who are allowed to sell lottery tickets.

(e) Specific sporting, charitable, social, or other special events where lottery tickets may be sold if in conformity with law.

Special licensed Agents will be subject to these Regulations.

**(9) Obligations of Licensed Retailers**

Each Agent accepts and assumes the following obligations and responsibilities when he accepts a license to sell lottery tickets:

(a) Each agent shall deposit all proceeds resulting from his sales of lottery tickets into a specified lottery bank account.

(b) Each Agent should make available at all lawful times during his normal business hours lottery tickets for sale to the public in the place of business designated in the license.

(c) Each Agent shall abide by the law, these Regulations and all other directives or instructions issued by the Director.

(d) Each Agent grants to the Lottery Office, and its Agents and representatives, an irrevocable license to enter upon the premises listed as location(s) on the Agent's license in which tickets may be sold or any other location under the control of the Agent where the Director may have good cause to believe lottery materials or tickets are stored or kept in order to inspect said lottery property and the premises.

(e) All property given to an Agent remains the property of the Lottery Office, and upon demand, the Agent agrees to deliver forthwith same to the Director.

(f) All books and records pertaining to the Agent's lottery activities shall be made available for inspection and/or audit at reasonable hours, upon demand, to the Director.

(g) No Agent shall advertise or otherwise display advertising in any part of the Agent's licensed location which may be considered derogatory or adverse to the operation or dignity of the Lottery and the Agent shall remove same forthwith if requested by the Director or his representative.

(h) Each licensee shall accept full responsibility for the acts and conduct of his employees, agents and representatives in connection with all activities of the Lottery Office, and shall hold the Lottery harmless.

(i) Each Agent is required to sell a minimum number of tickets as determined by the Director.

(j) Each Agent is required to make available official game rules applying to any specific game to any player desiring to inspect same.

(k) Each Agent shall report promptly any violation or any facts or circumstances that may result in a violation of these regulations, or in a violation of State or Federal law, excluding violations concerning motor vehicle laws.

(l) Each Agent shall conduct lottery operations in a manner that does not pose a threat to the public, health, safety, or welfare of the citizens of Delaware, or reflect adversely on the security or integrity of the lottery.

**(10) Lottery Accounts**

(a) The Director may, in his discretion, require any or all lottery sales Agents to deposit to the credit of the State

Lottery Fund, in banks designated by the Director, all monies received by such Agents from the sale of Lottery tickets, and to file with the Director or his designated agent, reports of their receipts and transactions in the sale of lottery tickets in such form and containing such information as he may require.

(b) The Director may make such arrangements for any person, including a bank, to perform such functions, activities, or services in connection with the operation of the Lottery as he may deem advisable pursuant to the Act and these Regulations, and such functions, activities, and services of such person.

(c) All deposits shall be secured in accordance with applicable State and Federal laws.

**(11) Lottery Tickets**

(a) Lottery tickets shall be prepared for sale and allocated to the Agent by the Lottery Office.

(b) Tickets which are not accounted for by an Agent on the settlement date and within the time period designated by the Director, regardless of the reason, shall be deemed sold to the Agent.

(c) The Lottery office shall not be responsible for lost, stolen, or mutilated tickets after sale of same to the public.

**(12) Sale of Tickets – Limitations**

No person may sell a ticket for less than or greater than its stated price. Any such ticket shall be considered an illegal ticket and shall not be validated by the Lottery. No Lottery sales Agent shall sell a ticket to a known third party ticket resaler or enter computer-generated betting slips from a third-party resaler for the sale of Lottery tickets. No person other than a duly licensed Lottery sales Agent or his employee may sell lottery tickets except that nothing in this section shall be construed to prevent a person who may lawfully make such a purchase from making a gift of lottery tickets to another. An Agent shall not sell a ticket away from locations listed in his license.

**(13) Purchasing Restrictions**

(a) No ticket or share in any Delaware Lottery game shall be purchased by, and no prize be paid to an employee of the Lottery Office or any member of their immediate households. This restriction shall also prohibit the purchase of any lottery ticket for a game in which the Delaware Lottery is joint participant.

(b) No ticket or share in games where winners are determined by drawings, shall be purchased by, and no prize shall be paid to an employee of Lottery contractors, subcontractors or vendors, or any Lottery contract employee, that has any duty or responsibility associated with the Lottery's drawings, or game operations.

(c) No Lottery instant game ticket shall be purchased and no prize shall be paid to any Lottery instant ticket

supplier employee.

(d) No ~~Lottery on-line~~ games ticket shall be purchased and no prize shall be paid to an employee of the Lottery's on-line games computer system supplier.

(e) All ticket sales shall be final and an Agent is not to accept ticket returns except as otherwise provided in these Regulations or with the approval of the Director.

(f) No ticket or share shall be sold to any person under the age of (18), but this shall not be deemed to prohibit the purchase of a ticket or share for the purpose of making a gift by a person 18 years of age or older to a person less than that age. Any Agent who knowingly sells or offers to sell a lottery ticket to any person under the age of 18 shall be subject to the penalties as provided in the Act.

#### **(14) Types of Lotteries**

The Lottery Office reserves the right to institute any type of lottery game as is allowable under the Act any time it is deemed in the best interest of the State.

Rules and regulations concerning individual games will be promulgated by the Director as required.

#### **(15) Manner of Random Selection**

(a) The dates, times, and locations for each Lottery drawing shall be determined by the Director.

(b) The lottery events shall be open to the public with no admission charge.

(c) The manner of winning number selections shall be defined for each game in the rules for that game.

#### **(16) Determination of Prize Winners**

(a) The Director shall adopt a prize structure for each type of lottery game administered by him and shall, from time to time, review and, if advisable, revise said prize structure.

(b) The pertinent prize structure shall become a part of the rules of each game offered by the State Lottery.

(c) Any prize structure adopted by the Director and any revisions thereof shall take effect on the date announced by the Director, provided, however, that no revision of the prize structure may take effect after the initiated time for sale of tickets for the winner determination in the game featuring the revised prize structure.

#### **(17) Notification of Prize Winners**

As soon as practicable after each drawing, each Agent shall, at each location for which a license has been issued, post in a prominent and conspicuous part of his business location in full view of the public, the winning lottery numbers. The winning weekly lottery numbers shall remain posted until the next weekly lottery makes new numbers available to be posted. Each Agent shall fully cooperate to give the public exposure and type of display of the winning lottery numbers in his location as may be requested by the

Director.

#### **(18) Procedure for Claiming Prizes**

The following shall be the procedure by which prizes may be claimed and paid from the State Lottery Fund:

(a) Place of Claims: - All cash prizes under an amount defined by the Director may be claimed through a duly authorized claim center, which may be but is not limited to an Agent's licensed location or at the offices of the Division of Revenue. All ~~larger~~ cash prizes greater than \$5000 must be claimed ~~by mail or in person~~ at the Lottery Office Headquarters.

(b) Claim Forms - Each prize ticket winner may be required to complete a claim form and ~~or~~ to sign the winning ticket or both at the discretion of the Director. If the prize ticket owner is a minor or a person unable to complete the required form(s), then said minor or person shall have his guardian, conservator, adult member of his household, or other proper representative complete the claim form in his stead. If the Director determines that the person who completed the claim form on behalf of the owner is not the proper person to claim the prize on behalf of the owner, the Director may require a new claim form completed by a person to claim the true owner's prize. The claim form shall be in such form as the Director may, from time to time, deem necessary and proper to protect the Agency and the public interest.

(c) Listing Winning Tickets - Each Agent will be provided with a list containing winning lottery numbers for prior weeks.

(d) Lottery Verification - The Agent shall review the winning ticket and must be assured that the ticket is a proper winner and is signed by the claimant. The Agent shall validate the winning ticket and pay to the winner the amount of winnings up to the limit set by the Director. Should the Agent have any questions about the validity of a winning ticket, the ticket must be turned in to the Lottery office for payment.

(e) Lottery Validation - All winning tickets ~~over an amount defined by the Director and paid by Agents in the field~~ will be validated. A winning ticket must not be counterfeit in whole or in part and must be presented by a person authorized to play the Lottery. In the event it is determined that a prize was paid by an Agent on a ticket which was not a winner, for any reason, the person signing the ticket will be contacted, advised of the error and will be required to reimburse the Lottery for said payment. If an Agent pays any claim, which was not a winner and the holder of the ticket fails to reimburse the Lottery or cannot be located, the Agent will be held responsible for the improper payment. All winning tickets submitted on a claim form to the Lottery Office for payment shall be validated. In the event that a ticket is determined to be invalid, the Director will notify the claimant that said ticket is invalid

and no prize will be paid. All tickets will be considered void if altered, torn, misprinted, illegible or damaged unless the Director is satisfied that the ticket is genuine. If it is determined that a ticket contains a manufacturing defect which makes said ticket appear to be a winner when in fact it is not, the bearer shall have the right to expect reimbursement for the full purchase price of said ticket, but shall not be awarded any prize.

(f) Appeal by Claimant – If a claimant is aggrieved by the Director's denial of his claim or a prize, he may request an informal hearing with the Director to discuss his grievances and a reconsideration of his claim by the Director. If the Director concludes that there is meritorious basis for the claimant's complaint, he may revise his prior decision. The decision of the Director shall be final.

(g) Duration of Ticket Redeemability – A winning on-line ticket will be redeemable for a period of twelve (12) calendar months from the Drawing Date of the lottery for which it was purchased. A winning instant scratch game ticket will be redeemable for a period of twelve (12) calendar months from the announced end of that game's sales. Prizes not collected within that period revert to the State Lottery Fund of the Delaware State Lottery in order to fulfill the statutory prize requirement.

The Director reserves the right to offer special prizes above and beyond the normal prize structure. These prizes may be only redeemable for a specific period after which no prize will be awarded. These special situations will be clearly detailed in announcements to the public providing ample time for claims.

The Director may establish and modify procedures by which prizes may be claimed and paid by authorized Agents.

## (19) Ownership of Lottery Tickets

Until such time as a name is imprinted or placed upon the rear portion of the lottery ticket in an area designated for "name", a lottery ticket which has been sold shall be owned by the physical possessor of said ticket. Unsold tickets remain the property of the Lottery Office. When a name is placed on the rear of said ticket in the place designated therefor, the person(s) whose name(s) appear in that area shall be the owner(s) of said ticket and shall be entitled to any prize attributed thereto. ~~Notwithstanding any name(s) submitted on a claim form~~ Unless there is a conflict between the information on the claim form and the signature(s) on the back of the ticket, the Lottery Office shall make payment to the name(s) appearing on the back of the ticket in the space designated therefor, provided if more than one name appears on the rear of the lottery ticket, one of those persons whose name appears thereon may be designated to receive payment. This may be done by indicating on the claim form and by the signature on the claim form of all persons whose names appear on the rear of the ticket. The person(s) appearing for payment shall be the same as those whose

name(s) that which appears on the rear portion of the lottery ticket in the space designated.

## (20) Prize Rights Unassignable

No right of any person to a prize drawn shall be assignable, except that payment of any prize drawn may be paid to the designated Beneficiary(ies) of a deceased prize winner, and except that any person pursuant to an appropriate judicial order may be paid the prize to which the winner is entitled. The Director shall be discharged of all liability upon payment of a prize pursuant to this section.

## (21) Payment of Prizes to Persons Under 18 Years of Age

If the person entitled to a prize for any winning ticket is under the age of eighteen (18) years, and such prize is less than \$5,000.00, the Director may direct payment of the prize by delivery to an adult member of the minor's family or a guardian of the minor of a check or draft payable to the order of the minor. If the person entitled to a prize on any winning ticket is under the age of eighteen (18) years, and the prize is \$5,000 or more, the Director may direct payment to the minor by depositing the amount of the prize in a bank to the credit of an adult member of the minor's family or a guardian of the minor as a custodian in accordance with Delaware Law and for the purpose of this section the term "adult member of minor's family," "guardian of minor," and "bank" shall have the same meaning as in the Uniform Gifts to Minors Act, as applicable in Delaware. The Director shall be discharged of all liability upon payment of a prize to a minor pursuant to this section.

## (22) Prizes Payable After Death or Disability of Owner

All prizes or a portion thereof which remain unpaid at the time of the prize winner's death shall be payable to the prize winner's designated beneficiary(ies). The payment to the designated beneficiary(ies) of the deceased owner of any prize winnings by the Lottery Office shall absolve the Lottery Office and its Agents of any further liability for payment of said prize winnings. The Lottery Office need not look to the payment of the prize winning beyond the payee thereof. Under no circumstances will the payment of prize money be accelerated beyond its normal dates of payment by the Lottery Office. The Director reserves the right to petition any court of competent jurisdiction to request a determination for the payments of any prize winnings, including those winnings which are or may become due to the designated beneficiary(ies) of a deceased owner or an owner under a disability because of, but not limited to, underage, mental deficiency, physical or mental incapacity. If the legatee(s) or heir(s) of a deceased owner entitled to prize winnings obtain an order from a court of competent jurisdiction directing payments due and to become due from the Lottery Office to be paid directly to said legatee(s) or heir(s) or otherwise directs the Lottery Office to make

payments to another in the event of an owner's disability or otherwise, the Lottery Office shall pay the prize winnings accordingly.

**(23) Payment of Prizes**

(a) All prizes shall be paid within a reasonable time after they are awarded and after the claims are verified by the Director. For each prize requiring annual payments, all payments after the first payment shall be made on the anniversary date of the first payment in accordance with the type of prize awarded. The Director may, at any time, delay any payment in order to review a change of circumstances relative to the prize awarded, the payee, the claim, or any other matter that may have come to his attention. All delayed payments will be brought up to date immediately upon the Director's confirmation and continue to be paid on each original anniversary date thereafter.

(b) For Grand Prizes in the Lottery's Powerball game, those prizes shall be paid at the election of the player made no later than 60 days after the player becomes entitled to the prize with either a per winner annuity or cash payment. If the payment election is not made at the time of purchase and is not made by the player within 60 days after the player becomes entitled to the prize, then the prize shall be paid as an annuity prize. An election for an annuity payment made by a player before ticket purchase or by system default or design may be changed to a cash payment at the election of the player until the expiration of 60 days after the player becomes entitled to the prize. The election to take the cash payment may be made at the time of the prize claim or within 60 days after the player becomes entitled to the prize. An election made after the winner becomes entitled to the prize is final and cannot be revoked, withdrawn, or otherwise changed. Shares of the Grand Prize shall be determined by dividing the cash available in the Grand Prize pool equally among all winners of the Grand Prize. Winner(s) who elected a cash payment shall be paid their share(s) in a single cash payment. The annuitized option prize shall be determined in accordance with the rules and procedures approved by the Multi-State Lottery Association, of which the Delaware Lottery is a participating member. Neither the Multi-State Lottery Association nor the member lotteries including the Delaware Lottery shall be responsible or liable for changes in the advertised or estimated annuity prize amount and the actual amount purchased after the prize payment method is actually known to the Multi-State Lottery Association. In certain instances announced by the Multi-State Lottery Association Product Group, the Grand Prize shall be a guaranteed amount and shall be determined pursuant to MUSL rules and procedures. If individual shares of the cash held to fund an annuity is less than \$250,000, the MUSL Product Group, in its sole discretion, may elect to pay the winners their share of the cash held in the Grand Prize pool. All annuitized prizes shall be paid annually in twenty-

five equal payments with the initial payment being made in cash, to be followed by twenty-four payments funded by the annuity.

**(24) Discharge of State Lottery Upon Payment**

The State of Delaware, its Agents, officers, employees and representatives, the Lottery Office, its Director, Agents, officers, employees and representatives, shall be discharged of all liability upon payment of a prize or any one installment thereof to the holder of any winning lottery ticket or in accordance with the information set forth on the claim form supplied by the Director. If there is a conflict between the information on the winning lottery ticket and the information on the claim form, the Lottery Office may rely on the claim form after the ticket has been validated as a winning ticket and, in so doing, it will be relieved of all responsibility and liability in the payment of a prize in accordance with the information set forth therein. The Lottery Office's decision and judgment in respect to the determination of a winning ticket or of any other dispute arising from payment or awarding of prizes shall be final and binding upon all participants in the Lottery unless otherwise provided by law or these regulations. In the event a question arises relative to the winning ticket, a claim form, the payment, or the awarding of any prize, the Lottery Office may deposit the prize winnings into an escrow fund until it determines the controversy and reaches a decision, or it may petition a court of competent jurisdiction for instructions and a resolution of the controversy.

**(25) Declaratory Rulings by the Lottery Office**

On petition of any interested person, the Director may issue a declaratory ruling with respect to the applicability to any person, property or state of facts of any rule or statute enforceable by it, or the Director may refer such matters to the State Attorney General for such disposition. In the case of any matter concerning which a Declaratory ruling is brought for appeal, the petitioner may be represented by an attorney.

**(26) Postponement of Drawings**

The Director may postpone any drawing to a certain time and publicize the same if he finds, in his sole discretion, that such postponement will serve the public interest and protect the public interest.

**(27) Amendments**

The Director may amend, modify, or otherwise change these Regulations upon full compliance with law; said amendments, modifications or changes shall become as effective and applicable to Lottery business and administration as if part of the original Regulations.

**(28) Freedom of Information Requests****I. PURPOSE**

The purpose of this section is to prescribe regulations for the inspection and copying of public records by any citizen of the State of Delaware, held by the Delaware State Lottery Office, pursuant to 29 Del. C. Chapter 100 (the "Act").

**II. AVAILABILITY OF RECORDS****1. Requirement of Citizenry**

A. Persons other than citizens of Delaware are not entitled to the public review of records pursuant to 29 Del. C. Chapter 100.

B. The requester shall submit proof of Delaware citizenship to the Lottery. The Lottery may require verification of any information provided concerning citizenry before considering the request to provide access to public records. If the requester does not submit the verification upon the request of the Lottery Office, the request shall be denied.

C. The Lottery Office reserves the right to deny access to anyone other than the requester.

D. The Lottery Office shall consider a requester submitting any of the following a citizen of Delaware for purposes of these Regulations:

(1) The requester's current residential or business address is within the State of Delaware

(2) A copy of a current Delaware driver's license of the individual requesting the documents;

(3) A copy of Certification of Incorporation or the corporate identification number if the requester is a corporation of the State of Delaware; or

(4) A copy of the requester's Delaware voter registration card.

**2. Department Record Review**

Public records may be examined by the requester after the records have been located and reviewed by the Lottery Office to exclude records that are not public pursuant to the Act and these Regulations.

**III. EXEMPTIONS**

Documents determined by the Lottery Office not to be public pursuant to 29 Del. C. section 10002(d) will not be available for examination or public review.

**IV. RECORD REQUEST AND RESPONSE PROCEDURES****1. Form of Request**

A. All requests for access to records pursuant to the Act and these Regulations shall be made in writing. Except for subpoena duces tecum or other such requests for production, all envelopes containing the request and the letter itself shall both clearly indicate that the subject is a

Freedom of Information Act request.

B. All requests for access to records shall adequately describe the record sought in sufficient detail to enable the Lottery Office to locate the record with reasonable effort. The application request shall contain the name of the person making the request, the name and address of the person to whom the request is made, the purpose for the request and the planned use of the records, a reasonable description of the records requested, including the name, subject matter, number and date where possible. Requests that lack sufficient detail to enable the Lottery Office to identify records responsive to the request may be denied.

C. All written applications for access to records shall be acknowledged within fifteen (15) working days. If access to the records is granted, the materials will be provided in a reasonable time period by taking into consideration such factors as the specificity of the request, the amount of research or time required to retrieve the records, and the extent or scope of the request.

D. If the records are in active use or in storage and therefore, are not available at the time a request for same is made, the Lottery Office will so inform the individual and will provide access to the records as expeditiously as they may be made available.

**2. Time and Place for Examination**

The public may examine public records which are available, by appointment, at the offices of the State Lottery Office between the hours of 9:30 a.m. and 3:00 p.m. on Monday through Friday, excluding state holidays.

(a) No individual shall remove the originals of the copies of any records from the Lottery Office without written permission of the Lottery Office's custodian of the records.

(b) The Lottery Office will provide reasonable facilities for conducting the inspection of the records.

(c) The Lottery Office will supervise the conduct of the inspection in order to protect the records and to prevent the disruption of the essential functions of the Office.

The Lottery Office will be under no duty or obligation to furnish copies of records by mail and may require the individual requesting the records to inspect said records prior to furnishing copies if a request for access is voluminous, or too general, or both. If copies of the requested records are to be furnished by mail, however, the fee as determined by section V of these regulations and the mailing costs shall be collected before the copies are forwarded to the individual requesting same.

**3. Reproduction of Documents**

A. Public records may be reproduced and copies may be provided to the requester in accordance with Section V of these regulations.

B. When the Lottery Office determines that a

request for reproduction is unduly burdensome, the Lottery Office may, in its discretion:

(1) Arrange for a commercial facility to make the reproductions at the expense of the requester; or

(2) Make any other arrangements for reproduction that are suitable to the Lottery Office.

C. When a request for reproduction is made that exceeds 100 photocopied pages, the Lottery Office may require the requester to provide, at the requestor's expense personnel and equipment to make the reproductions.

#### V. FEES

A. The cost of photocopying public records shall be .50 per photocopied page and the associated costs of delivery.

B. Where it is anticipated that the fee chargeable pursuant to this section will exceed twenty-five dollars (\$25.00) and the person making the request has not indicated in advance a willingness to pay such a fee, that person shall be promptly informed of the amount of the anticipated fee or such portion thereof as can be readily estimated. The notice shall afford and so advise the person of the opportunity to confer with the Lottery Office for the purpose of reformulating the request so as to meet that person's needs at a reduced cost.

C. The Lottery Office reserves the right to refuse access to requesters who have an outstanding balance for photocopies owed to the Lottery Office.

D. Payment of fees pursuant to this section shall be made in cash, U.S. money order, business check, or by certified bank check payable to the Delaware State Lottery Office.

#### (29) Fingerprinting Procedures

##### I. State Bureau of Identification

1. The applicant or licensee will contact the State Bureau of Identification ~~through the toll free telephone number 1-800-778-9000~~ to make arrangements for fingerprint processing.

2. A fee of ~~(\$49.00 as of June 13, 1995)~~ is required for state and federal processing of fingerprint cards and criminal history records, payment shall be made in the form of certified check or money order payable to the Delaware State Police. The fee is set by the State Bureau of Identifications and payment is to be made directly to that agency.

3. Applicants must complete fingerprint cards with the necessary personal information to sign the waiver form to release criminal history record information to the Director. At the time of the processing, the applicant must show proof of identification to complete the criminal history request.

4. Certified copies of the criminal history will be forwarded to the ~~applicant and~~ Director of the Lottery, with a copy available to the applicant upon request.

5. A Verification Form of Processing will be completed

by Delaware State Police personnel and provided to the applicant.

6. The State Bureau of Identification shall act as the intermediary for the receipt of the federal criminal history record checks performed by the Federal Bureau of Identification. The State Bureau of Identification shall forward the results of these federal record checks to the attention of the Lottery Director in a confidential manner.

##### II. Lottery Office

###### A. Determination of Suitability and Appeal Process

1. A person subject to 29 Del. C. §4807A shall have the opportunity to respond to the Lottery Director regarding any information obtained prior to a determination of suitability for licensure. Such a response shall be made within ten (10) working days of the person's receipt of the criminal background information from the State Bureau of Identification. The determination of suitability for licensure shall be made by the Lottery pursuant to the factors listed in 29 Del. C. §4807A in regard to an applicant's criminal history. The Lottery will also consider the factors contained in 29 Del. C. chapter 48 and the Lottery Regulations in considering agent applications for licensure.

2. The Lottery shall communicate the results of the determination of suitability in writing, within thirty (30) days of the receipt of the person's response to the criminal history information, unless extenuating circumstances require a longer period. If a determination is made to deny a person licensure, the person shall have an opportunity to appeal for reconsideration as set out below.

a. Appeal shall be initiated by a person notified that he/she is being denied a license pursuant to 29 Del. C. section 4807A and in compliance with Section 5(c) of these Regulations by submitting a letter of appeal to the Lottery Director within ten (10) working days of the receipt of the written notice.

b. The appeal shall be reviewed by the Lottery Director and the person shall be given the right to be heard by the Director or the Director's designee within ten (10) working days of the receipt of letter of appeal, unless extenuating circumstances require a longer period.

c. A written decision shall be rendered by the Director or the Director's designee within thirty (30) working days of the hearing, unless extenuating circumstances require a longer period. All decisions made by the Lottery under this appeal procedure are final.

###### B. Confidentiality

1. All records pertaining to criminal background checks, pursuant to 29 Del. C. §4807A and copies of suitability determinations of applicants for licensure, shall be maintained in a confidential manner, including, but not limited to, the following:

a. Access to criminal background check records, and letters of reference accompanying out-of-state

criminal background checks, and determinations of suitability of applicants shall be limited to the Director and designated personnel;

b. All such records shall be kept in locked, fireproof cabinets;

c. No information from such records shall be released without the signed approval of and appropriate signed release of the applicant.

## C. Subsequent Criminal History Information

1. Subsequent criminal history shall be sent by the State Bureau of Identification to the Director of the Lottery and shall be used by the Lottery in making a determination about the person's continued suitability as a licensee.

## Delaware State Video Lottery Regulations

### 14.0 Fingerprinting Procedure

14.1. The license applicant, licensee, or video lottery agent or technology provider employee will contact the State Bureau of Identification or the Delaware State Police Video Lottery Enforcement Unit to make arrangements for fingerprint processing.

14.2. A fee is required to be paid for state and federal processing of fingerprint cards and criminal history records. The fee is set by the State Bureau of Identification and payment is to be made directly to that agency.

14.3. Applicants must complete fingerprint cards with the necessary personal information to sign the waiver form to release criminal history record information to the Director or the Video Lottery Enforcement Unit. At the time of the processing, the applicant must show proof of identification to complete the criminal history request.

14.4. Certified copies of the criminal history record will be forwarded to the Director of the Lottery or the Video Lottery Enforcement Unit. The Lottery Director or Video Lottery Enforcement Unit will forward copies of the criminal history to license applicants or licensees. For employees of video lottery agents or technology providers, the Director or the Video Lottery Enforcement Unit will forward copies of the employee's criminal history to the employer's designated contact person upon request.

14.5. The State Bureau of Identification shall act as the intermediary for the receipt of the federal criminal history record checks performed by the Federal Bureau of Identification. The State Bureau of Identification shall forward the results of these federal record checks to the attention of the Lottery Director and/or the Video Lottery Enforcement Unit in a confidential manner.

14.6. A person subject to 29 Del. C. §4807A shall have the opportunity to respond to the Lottery Director regarding any information obtained prior to a determination of suitability for licensure. Such a response shall be made within (10) working days of the person's receipt of the criminal background information from the State Bureau of

### Identification.

The determination of suitability for licensure shall be made by the Lottery pursuant to the factors listed in 29 Del. C. §4807A regarding an applicant's criminal history. The Lottery will also consider the factors contained in 29 Del. C. chapter 48 and these Video Lottery Regulations in considering applications for licensure. The Lottery will consider the truthfulness of the applicant, licensee, or employee in disclosing their criminal history. Under 29 Del. C. §4805(a)(16)(17), the Lottery Director shall consider the background of key employees or video lottery operations employees in order to determine if the person's reputation, habits, and associations pose a threat to the public interest of the State or to the reputation of or effective regulation and control of the video lottery. It is specifically provided, pursuant to 29 Del. C. §4805(a)(16)(17), that any person convicted of any felony, a crime involving gambling, or a crime of moral turpitude within 10 years prior to applying for a license or at any time thereafter shall be deemed unfit. The Director may determine whether the licensing standards of another state are comprehensive, thorough and provide similar adequate safeguards and, if so, may in the Director's discretion, license an applicant already licensed in such state without the necessity of a full application and background check. The Delaware State Police shall conduct the security, fitness, and background checks required by §4805(a)(16)(17) and the Video Lottery Regulations.

14.7. The Lottery shall communicate the results of the determination of suitability in writing, to the license applicant or licensee within thirty (30) days of receipt of the criminal history information, unless extenuating circumstances require a longer period. If a determination is made to deny a person licensure, the person shall have an opportunity to appeal for reconsideration as set out below.

(1) Appeal shall be initiated by a person notified that he/she is being denied a license pursuant to 29 Del. C. §4807A and Video Lottery Regulation 13.3 by submitting a request for a hearing to the Director within ten (10) working days of the receipt of the written notice.

(2) The appeal shall be reviewed by the Lottery Director and the person shall be given the right to be heard by the Director or the Director's designee within thirty (30) working days of the receipt of letter of appeal, unless extenuating circumstances require a longer period. Any hearing will be pursuant to the procedures in the Video Lottery Regulations 13.5-13.11, whichever is applicable.

(3) A written decision shall be rendered by the Director or the Director's designee within thirty (30) working days of the hearing unless extenuating circumstances require a longer period. All decisions made by the Lottery under this appeal procedure are final.

14.8 The Lottery or the Video Lottery Enforcement Unit will communicate the results of suitability in writing regarding an employee to either the video lottery agent or



technology provider employing said individual. The Lottery will provide a copy of the criminal history record to the employee upon request.

14.9 All records pertaining to criminal background checks, pursuant to 29 Del. C. §4807A and copies of suitability determinations of applicants for licensure, shall be maintained in a confidential manner, including, but not limited to, the following:

(1) Access to criminal background check records, and letters of reference accompanying out-of-state criminal background checks, and determinations of suitability of applicants shall be limited to the Director and designated personnel;

(2) All such records shall be kept in locked, fireproof cabinets;

(3) No information from such records shall be released without the signed release of the applicant.

14.10 Subsequent criminal history shall be sent by the State Bureau of Identification to the Director of the Lottery and/or the Video Lottery Enforcement Unit. This subsequent criminal history information shall be used by the Lottery and the Video Lottery Enforcement Unit in making a determination about the person's continued suitability as a licensee or employee of a video lottery agent. The licensee or employee shall notify the Video Lottery Enforcement Unit within twenty-four (24) hours of any change in his criminal history information.

#### 15.0 ~~14.0~~ Severability

The sections and subsections of these rules and regulations shall be deemed severable. Should any section or subsection be deemed by judicial opinion or legislative enactment to be invalid, unconstitutional or in any manner contrary to the laws of the State of Delaware, then such opinion or enactment shall invalidate only that particular section or subsection of these rules and regulations and all other sections shall remain in full force and effect.

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## **DEPARTMENT OF HEALTH AND SOCIAL SERVICES**

**DIVISION OF SOCIAL SERVICES**  
Statutory Authority: 31 Delaware Code,  
Section 512 (31 Del.C. 512)

**Public Notice**  
**Division of Social Services**  
**Delaware's General Assistance Program**

The Delaware Health and Social Services / Division of Social Services / Delaware's General Assistance Program is proposing to implement a policy change to the Division of Social Services' Manual Section 4004.6 and 4004.7. These

changes arise from aligning the rules for cash assistance programs.

### **Summary of Proposed Revisions:**

- Excluding earned income of minors in counting to eligibility and benefit determination in the General Assistance Program.

### **Proposed Regulations:**

#### **4004.6 Minor Student Earned Income – ABC and GA**

Disregard, without time limits, earnings of dependent children, regardless of student status, in determining the family's eligibility and the amount of A BETTER CHANCE WELFARE REFORM PROGRAM or General Assistance benefits.

#### ~~4004.7 Minor Student Earned Income – GA~~

~~The earned income of a minor student is counted in all financial eligibility determinations and grant calculations unless the student is a participant in a JTPA or a Department of Education sponsored employment program. Earned income from JTPA and Department of Education sponsored employment programs are disregarded for students under 18 years of age.~~

### **Invitation for Public Comment**

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to the Mary Ann Daniels; Policy and Program Development Unit, Division of Social Services, P. O. Box 906, New Castle, DE, by July 31, 2000.

The action concerning the determination of whether to adopt the proposed regulations will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

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**DIVISION OF SOCIAL SERVICES**  
Statutory Authority: 31 Delaware Code,  
Section 512 (31 Del.C. 512)

**PUBLIC NOTICE**  
**DIVISION OF SOCIAL SERVICES**

The Delaware Health and Social Services, Division of Social Services, is proposing to delete policies governing the Food Stamp Employment and Training portion of the DSSM Policy Manual. The Division of Social Services Policies at

Sections 10004.3 and 10004.4 have been superseded by Food Stamp sanctioning policy at 9021 of the DSSM Food Stamp policy manual and are thereby no longer valid.

## SUMMARY OF PROPOSED REVISIONS:

Eliminates Sections 10004.3 and 10004.4 of the Food Stamp Employment and Training Section of the DSSM Policy Manual. These sections concerning Conciliation and Sanction Period and Penalty have been superseded by 9021, Failure to Comply, of the Food Stamp Section of DSSM Policy Manual.

## COMMENT PERIOD:

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to the Director, Division of Social Services, P.O. Box 906, New Castle, DE, by July 31, 2000.

### ~~10004.3 Conciliation~~

The Division's conciliation process is as follows:

~~A. Step 1: The conciliation process begins the day following the date the Case Manager learns of the non-compliance. This can be:~~

- ~~1. the day after a registrant misses the initial or any subsequent interview with the Case manager;~~
- ~~2. the day after a contractor notifies the Case manager that the registrant missed an interview or a component session, or~~
- ~~3. the day after the Case Manager learns that the registrant failed to complete the number of job search contacts.~~

~~The conciliation process continues for a period not to exceed 30 calendar days.~~

~~B. Step 2: Within five days of learning of the non-compliance, contact the registrant by letter. This letter will do the following:~~

- ~~1. notify the non-complying household member of the potential loss of benefits;~~
- ~~2. tell the non-complying household member to call the Case Manager if there is good reason for not complying;~~
- ~~3. tell the non-complying household member of the requirements of the First Step Food Stamps program; and~~
- ~~4. tell the non-complying household member what must be done and by what time it must be done to avoid a notice of adverse action.~~

~~C. Step 3: Determine Good Cause. If the non-complying household member **contacts the Case Manager with** a good reason for not complying, determine if this reason meets~~

~~good cause conditions. The good cause determination leads to either:~~

- ~~1. a finding of good cause, in which case the Case Manager reschedules the activity; or~~
- ~~2. a finding that good cause does not exist, in which case the Case Manager tells the non-complying household member what must be done to comply.~~

~~D. Step 4: Give the non-complying household member a definite date by which compliance is to take place. This date should be within 10 to 15 working days from the date the original letter was sent. In addition, tell the non-complying household member of the actions necessary to achieve compliance and what specifically must be done to avoid the notice of adverse action. The action must be a verifiable act of compliance, such as attending a job search activity. Verbal commitments by the household member are not sufficient, unless the member is prevented from complying by circumstances beyond the control of the household member.~~

~~E. Step 5: If the household member does not respond to the original letter or does not perform a verifiable act of compliance, the Case Manager will issue a notice of adverse action. This notice indicates that a sanction is to take place. This NOAA is to be issued no later than the last day of the conciliation period. (The opportunity to sanction is lost if the NOAA is issued after the 30 day time period).~~

~~F. Step 6: The Case Manager informs the financial services worker assigned to the Food Stamp case about the NOAA through a DCIS message.~~

~~As the above steps note, the Case Manager is responsible for sending the NOAA to the non-complying registrant. This assures that the Case Manager can complete both the conciliation and sanctioning process within the required 30 day time period. The Case Manager notifies the financial services worker assigned to the Food Stamp case of the NOAA through a DCIS message.~~

### ~~10004.4 Sanction Period and Penalty~~

#### ~~10004.3 Sanction Period and Penalty~~

~~See Section 9021 of Food Stamp Policy for appropriate sanctions and penalties.~~

~~The sanction period begins with the first month following the expiration of the notice period, unless a fair hearing is requested. The sanction continues for two months unless the participant complies by participating in the First Step Food Stamps activity or becomes exempt from the work registration requirement.~~

The penalty for non-compliance is as follows:

- ~~A. If non-compliance is by the head of household, the entire household is ineligible;~~  
~~B. If non-compliance is by any other household member, including the primary wage earner who is not the head of household, remove the individual from the household and treat the individual as an ineligible household member.~~

#### ~~10004.4.1 Information Coordination~~

##### 10004.3.1 Information Coordination

~~The First Step – Food Stamps Case Manager coordinates information with both the Financial Services Worker and service providers.~~

A. Registration in DCIS:

Non-exempt Food Stamp recipients are registered for work at the time of application.

B. Case Manager Assignment:

The registration indicator on the input document to DCIS produces an automatic referral to the First Step - Food Stamps Program, which informs the Case Manager of a work registration referral.

C. Referral to Components and Service Providers:

Case Managers assign those registrants who keep their assessment interview to an employment and training component, or they determine that the registrant is individually exempt. Case Managers can assign registrants to a continuation of the Independent Job Search component or a component provided by JTPA or a contracted service provider.

Case Managers use the E & T MIS to refer registrants to contracted service provider programs. Case Managers also make referrals to JTPA programs.

~~D. Conciliation and Sanction:~~

~~Case Managers send letters to those registrants who fail to comply with component requirements, which begins the conciliation process. The letter warns registrants of a potential sanction, why the registrant is facing sanction, and what the registrant needs to do to avoid the sanction.~~

~~If within the 30 day conciliation time period registrants fail to make a verifiable act of compliance, Case Managers issue a Notice of Adverse Action (NOAA) through a DCIS client notice system generated letter. Using assigned reason codes, Case Managers can generate a letter tailored to the specific action of the registrant. The letters detail the specific action that initiated the sanction, the length of the sanction, what the registrant needs to do to have benefits reinstated, the right of the registrant to request a fair hearing and, who is taking this action. Case Managers also inform the financial services worker assigned to the Food Stamp case about the NOAA by through a DCIS message. Finally, the DCIS provides a management report which details those individual registrants or registrant households~~

~~sanctioned for non-compliance.~~

~~D E. Change in Exemption Status:~~

It is the responsibility of the service providers to notify Case Managers of any circumstances which may cause registrants to fall into exempt categories. This is particularly important where the situation of the registrant has changed since assignment to the component. The Case Managers review this information and determine if the participant is exempt. In turn, Case Managers notify service providers of significant interim changes, such as address, participation status, and so forth.

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## **DIVISION OF SOCIAL SERVICES**

Statutory Authority: 31 Delaware Code,  
Section 505 (31 Del.C. 505)

### **PUBLIC NOTICE**

#### **Medicaid / Medical Assistance Program**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 505, the Delaware Department of Health and Social Services (DHSS) / Division of Social Services / Medicaid Program is amending its Division of Social Services Manual to clarify the following policies: status of noncitizen applicants for state-funded benefits; American Indians born in Mexico are qualified aliens; citizenship documentation; medical support requirement for Medicaid-only applicants and recipients; and, fair hearings for applicants and recipients of the Delaware Healthy Children Program. Further, Medicaid is amending its manual to add new eligibility policy for the Delaware Prescription Assistance Program.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to the Director, Medical Assistance Programs, Division of Social Services, P.O. Box 906, New Castle, DE 19720 by July 31, 2000.

### **REVISION**

#### **14300 Citizenship and Alienage**

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA, P.L. 104-193) enacted on August 22, 1996, significantly changed Medicaid eligibility for individuals who are not citizens of the United States. The legislation revised the categories of noncitizens who may be determined eligible for Medicaid. The legislation identifies noncitizens as qualified aliens or

nonqualified aliens. The term qualified refers to groups of aliens whose members may establish Medicaid eligibility under certain circumstances and subject to certain limitations. For specific groups of aliens identified as nonqualified, eligibility is limited to the treatment of an emergency medical condition as defined in this section.

In State Fiscal Year 1998, (SFY 98), the Delaware legislature appropriated STATE ONLY FUNDS to ~~restore~~ provide coverage of full Medicaid benefits to legally residing noncitizens who ~~lost eligibility~~ are ineligible for full Medicaid benefits because of PRWORA. Coverage for these aliens will be provided on a fee for service basis and is subject to the availability of state funding. In the event state funding is exhausted, the benefits will be reduced to coverage of emergency services and labor and deliver only.

Aliens who may be found eligible for full Medicaid coverage using the state funds include legally residing nonqualified aliens and qualified aliens subject to the 5 year bar. Illegally residing aliens and ineligible aliens ARE NOT ELIGIBLE for full Medicaid coverage, but remain eligible for emergency services and labor and delivery only.

All applicants, whether aliens or citizens, must meet the technical and financial eligibility criteria of a specific eligibility group such as SSI related group, AFDC related group, or poverty level related group. Not every alien, qualified or nonqualified, will be eligible for Medicaid. For example, enrollment in a managed care organization is a technical eligibility requirement for adults in the expanded population under the Diamond State Health Plan demonstration waiver. A nonqualified alien or a qualified alien who is subject to the 5 year PRWORA bar cannot be found eligible in the expanded population. This is because the state funded benefits are provided on a FEE FOR SERVICE basis. An individual cannot be found eligible under the expanded population for emergency services only because those benefits are provided on a fee for service basis. Adults in the expanded population are required to enroll in MANAGED CARE to receive benefits.

## 14320.1 Medicaid Eligibility for Qualified Aliens (PRWORA and/or State Funds)

Effective January 1, 1998, all qualified aliens, regardless of the date of entry into the U.S., may be found eligible for full Medicaid benefits. This does NOT include long term care services. Legally residing nonqualified aliens may be found eligible for Medicaid long term care services upon residing in the United States for five years. Certain qualified aliens will be Medicaid eligible. Other qualified aliens will receive state funded benefits.

The Delaware legislature appropriated state only funds to ~~restore~~ provide full Medicaid benefits to legally residing noncitizens who ~~lost eligibility~~ are ineligible for full Medicaid because of PRWORA. Under PRWORA, certain qualified aliens entering the U.S. on or after 8/22/96 were

subject to a 5 year bar on eligibility. Coverage for full Medicaid benefits for the qualified aliens who are under the 5 year PRWORA bar, is subject to the availability of state funds.

The PRWORA policy (as amended by the Balanced Budget Act) which follows describes the eligibility for qualified aliens prior to the appropriation of state funds. In the event such state funding is exhausted, eligibility for qualified aliens will be determined using the PRWORA policy described below.

## 14320.3 Medicaid Eligibility Not Based on Date of Entry into U.S.

The following qualified aliens may be found eligible for Medicaid regardless of their date of entry into the U.S.:

- Refugees (§207 of INA)
- Asylees (§208 of INA)
- Aliens who have had deportation withheld under §243(h) or §241(b)(3) of the INA
- Honorably discharged veterans and aliens on active duty in the U.S. armed forces and the spouse or unmarried dependent children of a veteran or active duty serviceman.
- Cuban and Haitian entrants
- Amerasians
- American Indian born in Canada or Mexico or who is a member of an Indian tribe under section 4(e) of the Indian Self-Determination and Education Assistance Act

In addition, title IVE Foster Children and Adoption Assistance children may be found eligible for Medicaid regardless of date of entry provided the foster or adoptive parent of the child is also a qualified alien or a citizen. The IVE agency is responsible for making that determination about the parent. If a IVE payment is being made on behalf of the child, then the child is deemed eligible for Medicaid.

## 14330.2 Eligibility For State Funded Benefits (Nonqualified Aliens)

Effective January 1, 1998, legally residing nonqualified aliens, regardless of the date of entry into the U.S., may be found eligible for full Medicaid benefits. This does NOT include long term care services. Legally residing nonqualified aliens may be found eligible for Medicaid long term care services upon residing in the United States for five years.

The Delaware legislature appropriated state only funds to ~~restore~~ provide full coverage of Medicaid benefits to legally residing noncitizens who ~~lost eligibility~~ are ineligible for full Medicaid benefits because of PRWORA. Coverage for full Medicaid benefits for these legally residing nonqualified aliens is subject to the availability of state

funds.

In the event such state funding is exhausted, eligibility for legally residing nonqualified aliens will be determined using the PRWORA policy described in Section 14330.1.

#### **14380 Documentation of Citizenship or Alien Status**

Applicants must provide documentation of ~~citizenship~~ qualified alien status or lawful alien status. All noncitizens who declare they are qualified aliens or in lawful alien status, must provide INS documents to establish immigration status. Examples of acceptable documentation for ~~U.S. citizens~~, qualified aliens and lawful alien status are given in this section.

If the applicant will not provide evidence of ~~citizenship~~ or alien status and does not allege qualified or lawful alien status, the application is not denied, but an eligibility determination is completed for coverage of labor and delivery and emergency services only.

As required by §1137(d)(4) of the Social Security Act, Medicaid will be provided to individuals who meet all other nonimmigration Medicaid eligibility requirements, pending verification of immigration status. We will provide Medicaid to an otherwise eligible individual who has presented INS documents showing qualified or lawful alien status, pending verification of the document.

For noncitizen applicants who declare they are qualified or lawful aliens or for individuals who declare citizenship but have no documentation, we must allow the individual a reasonable opportunity to produce evidence of immigration or citizenship status. We will give the individual 30 days from the date of the receipt of application to produce an INS document or documentation of citizenship. If the individual meets all other eligibility requirements except for this documentation, we will provide Medicaid during this 30 day period.

If the applicant provides an expired INS document or has no documentation regarding his or her immigration status, refer the individual to the local INS district office to obtain evidence of status. As noted previously, Medicaid coverage is provided for a 30 day period pending verification of alien status. If the applicant can provide an alien registration number, follow the secondary verification procedures outlined below under Section 14390 - "Verification of Immigration Alien Status".

#### **14400 Acceptable Evidence of U.S. Citizenship**

~~The following are examples of acceptable documentation of U.S. citizenship for Medicaid applicants:~~

- ~~Birth certificate~~
- ~~Religious record of birth recorded in the U.S. or its territories within 3 months of birth, which indicates a U.S. place of birth. The document must show either the date of birth or individual's age at the time~~

~~the record was made.~~

- ~~Hospital record of birth in one of the 50 States, the District of Columbia, Puerto Rico (on or after January 13, 1941), Guam (on or after April 10, 1899), the U.S. Virgin Islands (on or after January 17, 1917), American Samoa, Swain's Island or the Northern Mariana Islands (unless the person was born to foreign diplomats residing in such a jurisdiction)~~
- ~~U.S. passport (not time limited passports, which are issued for periods of less than 5 years)~~
- ~~Report of Birth Abroad of a Citizen of the U.S. (INS Form FS-240)~~
- ~~TPQY from Social Security Administration showing citizen code "A" or "C"~~
- ~~Certification of Birth (INS Form FS-545)~~
- ~~U. S. Citizen I.D. (INS Form I-197)~~
- ~~Naturalization Certificate (INS Form N-550 or N-570)~~
- ~~Certificate of Citizenship (INS Form N-560 or N-561)~~
- ~~Northern Mariana Identification Card (issued by the INS to a collectively naturalized citizen of the U.S. who was born in the Northern Mariana Islands before November 3, 1986)~~
- ~~American Indian Card with a classification code "KIC" and a statement on the back (issued by the INS to identify U.S. citizen members of the Texas Band of Kickapoos living near the U.S./Mexican border)~~
- ~~Other alternative documentation that is determined to be acceptable by the State~~

#### **14410 Acceptable Evidence of Qualified Alien Status**

Acceptable documentation of qualified alien status is listed below. The card should show the date of admission or date of entry into the United States.

##### **A. Lawful Permanent Residents**

INS Form I-551, or for recent arrivals, a temporary I-551 stamp in a foreign passport or on Form I-94.

NOTE: INS has replaced Forms I-151, AR-3 and AR-3a. If a lawful permanent resident presents one of these old INS forms as evidence of status, contact INS using a G-845S and attach the old card.

##### **B. Refugees**

INS Form I-94 annotated with stamp showing entry as refugee under §207 of the Immigration and Naturalization Act (INA) and date of entry to the United States; INS Form I-688B annotated 274a.12(a)(3); I-766 annotated A3; or Form I-571. Refugees usually adjust to Lawful Permanent Resident status after 12 months in the U.S. However, for purposes of eligibility, the individual is still considered a refugee and it is important to check the coding on Form I-551 for codes RE-6, RE-7, RE-8, or RE-9.

**C. Asylees**

INS Form I-94 annotated with stamp showing grant of asylum under §208 of the INA; a grant letter from the Asylum Office of the INS; Form I-688B annotated 274a.12(a)(5); I-766 annotated A5; or an order of an Immigration Judge granting asylum. If the applicant provides a court order contact INS using a G-845S and attach a copy of the court order.

**D. Alien who has had deportation withheld under §243(h) of the INA**

Order of an Immigration Judge showing deportation withheld under §243(h) or §241(b)(3) and date of the grant; Form I-688B annotated 274a.12(a)(10); or I-766 annotated A10. If applicant provides a court order contact INS using G-845S and attach copy of court order.

**E. Parolees**

INS Form I-94 annotated with stamp showing grant of parole under §212(d)(5) of the INA and a date showing granting of parole for at least 1 year. INS Form I-688B annotated 274a.12(a)(4) or 274a.12(c)(11) or I-766 annotated A4 or C11 indicates status as a parolee but does not reflect the length of the parole period.

**F. Conditional Entrant**

INS Form I-94 annotated with stamp showing admission under §203(a)(7) of the INA, refugee-conditional entry; Forms I-688B annotated 274a.12(a)(3); or I-766 annotated A-3.

**G. Evidence of Honorable Discharge or Active Duty Status**

Discharge - a copy of the veteran's discharge papers issued by the branch of service in which the applicant was a member. (Department of Defense Form 214)

Active Duty Military - a copy of the applicant's current orders showing the individual is on full-time duty in the U.S. Army, Navy, Air Force, Marine Corps, or Coast Guard or an active military identification card, DD Form 2. Full time National Guard duty is excluded.

A self declaration under penalty may be accepted pending receipt of acceptable documentation. The individual is given 30 days to produce evidence; and, if the individual is otherwise eligible, Medicaid is provided during this 30 day period.

**H. Cuban and Haitian entrants**

I-551 annotated CH6, CNP, CU6, CU7; I-688B annotated 274a.12(a)(4); I-94 annotated 212(d)(5)

**I. Amerasian**

I-94 annotated AM1, AM2, AM3; I-551 annotated AM1, AM2, AM3.

**J. Battered Immigrant**

In order to be a qualified alien based on battery or extreme cruelty, the alien must meet the following requirements:

1. the alien must not now be residing in the same household as the individual responsible for the battery or extreme cruelty

2. the alien or the alien's child has been battered or subjected to extreme cruelty in the U.S. by a spouse or parent of the alien, or by a member of the spouse's or parent's family residing in the same household as the alien, but only if the spouse or parent consents to or acquiesces in such battery or cruelty and, in the case of a battered child, the alien did not actively participate in the battery or cruelty

3. there is substantial connection between the battery or extreme cruelty and the need for the public benefit sought. There is a substantial connection under any one or more of the following circumstances:

a) Where the benefits are needed to enable the alien and/or the alien's child to become self-sufficient following separation from the abuser;

b) Where the benefits are needed to enable the alien and/or the alien's child to escape the abuser and/or the community in which the abuser lives, or to ensure the safety of the alien and/or his or her child from the abuser;

c) Where the benefits are needed due to a loss of financial support resulting from the alien's and/or his or her child's separation from the abuser;

d) Where the benefits are needed because the battery or cruelty, separation from the abuser, or work absence or lower job performance resulting from the battery or extreme cruelty or from legal proceedings relating to the battery or cruelty (such as child support or child custody disputes) cause the alien and/or the alien's child to lose his or her job or require the alien and/or the alien's child to leave his or her job for safety reasons;

e) Where the benefits are needed because the alien or his or her child requires medical attention or mental health counseling, or has become disabled, as a result of the battery or cruelty;

f) Where the benefits are needed because the loss of a dwelling or source of income or fear of the abuser following separation from the abuser jeopardizes the alien's ability to care for his or her children (e.g. inability to house, feed, or clothe children or to put children into day care for fear of being found by the batterer);

g) Where the benefits are needed to alleviate nutritional risk or need resulting from the abuse or following separation from the abuser;

h) Where the benefits are needed to provide medical care during an unwanted pregnancy resulting from the abuser's sexual assault or abuse of or relationship with the alien or his or her child; and/or to care for any resulting children; or



i) Where medical coverage and/or health care services are needed to replace medical coverage or health care services the applicant or child had when living with the abuser.

4. the alien or alien's child must have a petition approved by or pending with INS under one of several subsections of the INA that sets forth a prima facie case for the status.

K. American Indian born in Canada or Mexico under section 289 of the INA or member of Indian tribe under section 4(e) of the Indian Self-Determination and Education Assistance Act

INS Form I-551 with the code S13; unexpired temporary I-551 stamp with code S13 in a Canadian passport or on Form I-94; satisfactory evidence of birth in Canada and a document that indicates the percentage of American Indian blood in the form of a birth certificate issued by the Canadian reservation or a record issued by the tribe; a membership card or other tribal document showing membership in the tribe that is on the list of recognized Indian tribes published annually by the Bureau of Indian Affairs in the Federal Register.

#### **15120.1.2 Child Support Cooperation**

Deprivation is not an eligibility requirement for this group. If the child is deprived of parental support, a referral to the Division of Child Support Enforcement for medical support is required.

#### **18100.3 Fair Hearings**

Applicants and recipients do not maintain a right to a fair hearing. The rules at DSSM 5000 Fair Hearing Practice and Procedures do not apply to DHCP.

### **NEW**

#### **DELAWARE PRESCRIPTION ASSISTANCE PROGRAM**

30000 Delaware Prescription Assistance Program

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#### **30000 DELAWARE PRESCRIPTION ASSISTANCE PROGRAM**

The 140<sup>th</sup> General Assembly amended Title 16, Delaware Code, by adding Chapter 30B to enact the Delaware Prescription Drug Payment Assistance Program. The purpose of this act is to provide payment assistance for prescription drugs to low-income senior and disabled individuals who are ineligible for, or do not have, prescription drug benefits or coverage through federal, state, or private sources.

The program is administered by the Fiscal Agent under contract with the Delaware Department of Health and Social Services.

The rules in this section set forth the eligibility requirements for coverage under the Delaware Prescription Assistance Program (DPAP). The DPAP is implemented January 1, 2000, with benefits beginning January 14, 2000.

30100 Definitions

Contractor: the agent who is under contract with the State to administer the DPAP.

Department: the Department of Health and Social Services or DHSS

Division: the Division of Social Services or DSS

### 30200 General Application Information

The application for DPAP must be made in writing on the prescribed DSS form. This request for assistance can be made by the applicant, guardian, or other individual acting for the applicant with his knowledge and consent. The application filing date is the date the application is received in either the Contractor's office or a DSS office.

DPAP will consider an application without regard to race, color, age, sex, handicap, religion, national origin, or political belief as per Title VI of the Civil Rights Act of 1964.

Filing an application gives the applicant the right to receive a written determination of eligibility and the right to appeal the written determination.

### 30201 Disposition of Applications

The Contractor must include in each applicant's case record facts to support the Contractor's decision on his application. The Contractor must dispose of each application by a finding of eligibility or ineligibility, unless:

- a) there is an entry in the case record that the applicant voluntarily withdrew the application, and that the Contractor sent a notice confirming his decision;
- b) there is a supporting entry in the case record that the applicant has died; or
- c) there is a supporting entry in the case record that the applicant cannot be located.

d) Certain factors of eligibility must be verified. If all information requested is not received, the Contractor cannot determine or redetermine eligibility. This may result in denial of the application or the termination of eligibility. Verifications received and/or provided may reveal a new eligibility issue not previously realized and this may require additional verifications. Failure to provide additional requested verifications may result in denial or termination of eligibility.

All applicants will receive a notice of acceptance or denial.

### 30202 Timely Determination of Eligibility

A time standard of 45 days will apply. This standard equals the period from the application filing date to the date that the notice of decision is mailed. The standard must be met except in unusual circumstances, such as:

- A decision cannot be made because the applicant or his representative delays or fails to take a required action.
- There is an administrative or other emergency beyond the Contractor's control.

### 30203 Reporting Changes in Circumstances

At time of application and redetermination, each individual household must be informed that he is responsible for notifying the Contractor of all changes in his circumstances, which could potentially affect his eligibility for DPAP.

### 30300 Technical Eligibility

The following requirements are factors of eligibility specific to DPAP.

#### 30301 Citizenship and Alienage

The individual must be a U.S. citizen or a lawfully admitted alien.

#### 30302 State Residency

The individual must be living in the State of Delaware.

#### 30303 Social Security Number

Each individual applying for DPAP must furnish his or her Social Security number.

#### 30304 Aged or Disabled Requirement

The individual must meet one of the following requirements:

- (a) be age 65 or over, or
- (b) be an individual between the ages of 19 and 64 who is receiving disability benefits under Title II of the Social Security Act. An individual is considered to meet the "receiving disability benefits" requirement if the individual is a former recipient of either Social Security Disability Insurance benefits or Supplemental Security Income benefits and was required by the Social Security Administration to accept Social Security Survivors benefits.

#### 30305 No Other Prescription Drug Coverage

The individual must not have or be ineligible for, prescription drug benefits or coverage through federal, state, or private sources regardless of any annual limitations to the benefits.

The individual must not have or be ineligible for:

- (a) Medicaid prescription benefits
- (b) prescription drug benefits through a Medicare supplemental policy
- (c) prescription drug benefits through a third party payer
- (d) the Nemours Health Clinic Pharmaceutical benefit as defined on 1/1/99

#### 30305.1 Exceptions to No Other Prescription Drug Coverage

Individuals who are eligible for the following drug benefits will not be excluded from eligibility for DPAP:

- (a) individuals eligible for Medicaid as Family Planning Only
- (b) individuals covered under a specific disease



state insurance program, for example a policy that pays only for cancer drugs

(c) individuals who are members of a discount drug program in which the policy does not actually pay for the drugs, for example American Association of Retired Persons (AARP).

#### 30400 Financial Eligibility

Income is any type of money payment that is of gain or benefit to a family. Income is either counted or excluded for the eligibility determination.

#### 30401 Countable Income

Countable income includes but is not limited to:

1. Social Security benefits – as paid after deduction for Medicare premium
2. Pension – as paid
3. Veterans Administration Pension – as paid
4. U.S. Railroad Retirement Benefits – as paid
5. Wages – net amount after deductions for taxes and FICA
6. Senior Community Service Employment – net amount after deductions for taxes and FICA
7. Interest/Dividends – gross amount
8. Capital Gains – gross amount from capital gains on stocks, mutual funds, bonds.
9. Credit Life or Credit Disability Insurance Payments – as paid
10. Alimony – as paid
11. Rental Income from entire dwelling – gross rent paid minus standard deduction of 20% for expenses
12. Roomer/Boarder Income – gross room/board paid minus standard deduction of 10% for expenses
13. Self Employment – countable income as reported to Internal Revenue Service (IRS)

#### 30402 Excluded Income

Excluded income includes but is not limited to:

1. Annuity payments
2. Individual Retirement Account (IRA) distributions
3. Payments from reverse mortgages
4. Capital gains from the sale of principal place of residence
5. Conversion or sale of a resource (i.e. cashing a certificate of deposit)
6. Income tax refunds
7. Earned Income Tax Credit (EITC)
8. Vendor payments (bills paid directly to a third party on behalf of the individual)
9. Government rent/housing subsidy paid directly to individual (i.e. HUD utility allowance)
10. Loan payments received by individual
11. Proceeds of a loan
12. Foster care payments made on behalf of foster

children living in the home

13. Retired Senior Volunteer Program (RSVP)

14. Veterans Administration Aid and Attendance payments

15. Victim Compensation payments

16. German reparation payments

17. Agent Orange settlement payments

18. Radiation Exposure Compensation Trust Fund payments

19. Japanese-American, Japanese-Canadian, and Aleutian restitution payments

20. Payments from long term care insurance or for inpatient care paid directly to the individual

#### 30403 Composition of the Family Budget Unit

The family budget unit includes:

- the needs and income of the applicant
- the needs and income of the spouse living with the applicant
- the needs but not the income of any individual who is claimed as a tax dependent of the applicant and/or applicant's spouse.

#### 30404 Eligibility Determination

Compare the countable family income to the income eligibility standard for the appropriate family budget unit size.

To be eligible for DPAP:

(a) the individual must have countable family income that is less than 200% of the Federal Poverty Level, or

(b) the individual has countable family income that is equal to or greater than 200% of the Federal Poverty Level and the individual has prescription drug expenses that exceed 40% of the countable family income.

The Federal Poverty Level (FPL) is published annually. The income eligibility standards based on the FPL will be issued within 10 business days after the FPL is published. The revised income eligibility standards will be used to determine eligibility for the month following the month in which the standards are issued.

#### 30405 Effective Date of Coverage

Coverage begins on the first day of the month following the month that eligibility is determined. There is no retroactive coverage. Eligible individuals will receive an identification card for DPAP.

#### 30406 Redetermination of Eligibility

A redetermination of eligibility must be completed by July of each year. If an individual's initial coverage begins in April, May, or June, a redetermination will not be required until July of the following year.

**30500 Benefits**

Prescription drugs covered under DPAP are restricted to medically necessary products manufactured by pharmaceutical companies that agree to provide manufacturer rebates. Policy and guidelines will follow the existing Delaware Medical Assistance Program limitations. Services covered include generic and brand name prescription drugs that have been approved as safe and effective by the Federal Food and Drug Administration as well as cost effective over-the-counter drugs prescribed by a practitioner. Necessary diabetic supplies not covered by Medicare will also be covered. Medications that are covered by Medicare are not covered under DPAP.

**30501 Limitations on Benefits**

Payment assistance to each eligible individual shall not exceed \$2,500.00 per State fiscal year. Individuals will receive a notice when 75% of the \$2,500.00 cap has been expended.

**30502 Co-payment Requirement**

There is a co-payment of \$5.00 or 25% of the cost of the prescription whichever is greater. The pharmacy will not dispense or provide the prescription until the co-payment is collected.

**30503 Waiver of Co-payment for Good Cause**

At the written request of the individual, the co-pay requirement may be waived for good cause.

Good cause for waiver of the co-payment is:

The individual has experienced a catastrophic situation resulting in unexpected, extraordinary expenses related to loss or significant damage to shelter or the well being of the individual or his immediate family.

The written request must explain the circumstances that led to the request. Verification of the circumstances is required in the form of collateral evidence that may include, but is not limited to, repair bills and police or insurance reports. The DPAP will provide written notification to the individual regarding the good cause decision. If good cause is granted, the co-payments will be waived for the remainder of the fiscal year.

**30600 Confidentiality**

DPAP will provide safeguards that restrict the use or disclosure of information about applicants and recipients to purposes directly connected with the administration of the DPAP.

Purposes directly related to administration of the DPAP include establishing eligibility, providing services for recipients, determining the amount of medical assistance, and conducting or assisting an investigation, prosecution, or civil or criminal proceeding related to the administration of the program.

At a minimum, the types of information about applicants and recipients that must be safeguarded and not released without consent include:

1. Names and addresses;
2. Medical services provided;
3. Social and economic conditions or circumstances;
4. Contractor evaluation of personal information;
5. Medical data, including diagnosis and past history of disease or disability;
6. Information received for verifying income eligibility and amount of medical assistance payments; and
7. Information about third party liability.

**30601 Release of Information to DPAP Providers**

DPAP providers have a contractual obligation to safeguard information about recipients. Providers may have access to certain eligibility information if they can provide:

- a) a DPAP identification number, or
- b) two of the following identifying factors: individual's full name, date of birth, Social Security number;

AND the date of service.

Providers who supply the above identifying factors may be given the following information:

- a) correct spelling of the recipient's name;
  - b) DPAP number;
  - c) date of birth;
  - d) an indication whether the individual is eligible for the date of service given or for a range of dates given.
- Providers may not be given all periods of eligibility.

**30602 Release of Information to Others**

At the time of application, individuals are informed that all eligibility information is confidential and disclosure without written permission of the individual is limited. DPAP has the authority to responsibly share information concerning applicants and recipients with:

- a) DHSS employees;
- b) Federal or federally assisted programs that provide assistance to individuals on the basis of need (SSI, HUD);
- c) contracted service providers.

Information may be released to comply with a subpoena or other valid court order.

DPAP must obtain specific written permission from the individual before releasing information to any other persons or sources.

**30700 Fair Hearings**

An opportunity for a fair hearing will be provided, subject to the provisions of this section, to any individual requesting a hearing who is dissatisfied with a decision to deny eligibility for the program, deny a request for waiver of the co-payment, or terminate reimbursement for covered services under DPAP.

The purpose of a fair hearing is to afford all applicants

and recipients an opportunity for an impartial, objective review of decisions.

#### 30701 Definitions

Advance Notice Period or Timely Notice Period - is the ten (10) day period between the date a notice is mailed to the date a proposed action is to take effect.

Appellant - is a recipient who has requested a hearing.

Benefits – prescription assistance provided under DPAP

Claimant - is an applicant who has requested a hearing.

Fair Hearing - is an administrative hearing held in accordance with the principles of due process that include:

1) timely and adequate notice;

2) the right to confront and cross-examine adverse witnesses;

3) the opportunity to be heard orally;

4) the right to an impartial decision maker;

5) the opportunity to obtain counsel.

Contractor – the contractor that represents DSS and is responsible for the preparation of the hearing summary and the presentation of its case and is subject to the rules, practices, and procedures enumerated herein.

Hearing Decision - is the decision in a case appealed to the Deputy Director of the Delaware Medical Assistance Program or his designee. The decision includes the substance of what transpired at the hearing and a summary of the case facts, supporting evidence, and pertinent State or federal regulations and gives the reason for the decision.

Hearing Officer - is the individual responsible for conducting the hearing and issuing a final decision on issues of fact and questions of law.

Hearing Record - a record of all evidence and other material introduced at the hearing, the hearing decision, and all other correspondence and other documents which are admitted as evidence or otherwise included for the hearing record by the hearing officer.

Hearing Summary - is a document prepared by the Contractor stating the reason(s) the action under appeal was taken and the information upon which the reasons are based. The summary may include documents to be used to decide the issue in question. Its purpose is to provide an appellant with information to prepare his case for the hearing.

Party - a party to a hearing is a person or other entity who has taken part in or is concerned with an action under appeal. A party may be composed of one or more individuals.

Request for a Fair Hearing - any clear written expression by the appellant or his representative that he wants to appeal a decision to a higher authority.

State Presenter – the Contractor advocating the State's case in a hearing.

#### 30702 Notices

Written notice of an action to applicants and recipients

will contain:

a) a statement of the client's right to a fair hearing as provided under this section.

b) the method by which he may request a fair hearing.

c) a statement that he may represent himself or that he may be represented by counsel or by another person.

#### 30703 Adequate and Timely Notice to Recipients

In cases involving the Contractor's proposed or intended action to discontinue, terminate, or reduce assistance described in these rules, or to deny a request for waiver of co-payment, no action may be taken unless the following conditions are met:

1. Written notice must be provided to the client that is "adequate." Adequate means a written notice that includes a statement of what action the Contractor intends to take, the reasons for the intended action, the specific regulations supporting such action, explanation of the individual's right to request a fair hearing, and the circumstances under which assistance may be continued if a hearing is requested.

2. The written notice must be "timely." It must be mailed no later than ten (10) days before the date of action; that is, at least ten (10) days before the intended change would be effective.

3. Each recipient shall be advised of his liability for repayment of benefits received while awaiting a fair hearing if the Contractor's decision is upheld.

4. Notices must contain information needed for the claimant to determine the accuracy of the Division's action or intended action. At a minimum all notices will:

(a) indicate the action or proposed action to be taken

(b) provide citation(s) to the regulation(s) supporting the action being taken;

(c) provide a detailed individualized explanation of the reasons(s) for the action being taken which includes, in terms comprehensible to the claimant, an explanation of why the action is being taken and, if the action is being taken because of the claimant's failure to perform an act required by a regulation, an explanation of what the claimant was required by the regulation to do and why his actions fail to meet this standard.

##### 30703.1 Exceptions to Timely Notice

The Contractor may dispense with timely notice but will send adequate notice not later than the date of action when:

1. The Contractor has factual information confirming the death of the recipient.

2. The recipient provides a clear written statement that assistance is no longer desired.

3. The recipient provides information which requires termination or reduction of assistance and the recipient has indicated in writing that he understands that the action is a consequence of supplying the information.

4. The appellant's whereabouts are unknown and Contractor mail directed to him has been returned by the post office indicating no known forwarding address.

5. The recipient's case has been accepted for assistance in another state or for another category of assistance and that fact has been established by the Division.

6. The recipient has been found eligible for Medicaid.

7. The recipient is incarcerated.

8. The recipient has other pharmacy insurance that was not reported on the application.

#### 30704 Jurisdiction

An opportunity for a hearing will be granted to any applicant who requests a hearing because his claim for prescription assistance is denied and to any recipient whose eligibility is terminated. DPAP recipients may appeal an adverse decision to the Deputy Director of the Delaware Medical Assistance Program or his designee.

To be considered, a request for a hearing must be a clear expression in writing by the appellant or his representative to the effect that he wants the opportunity to present his case to higher authority.

#### 30705 Time Limits

Hearings are subject to the following time limits:

1. Time limit for requesting a hearing prior to action.

If a request for a hearing is filed within the timely notice period (the period between the date a notice is mailed and the effective date of the action), benefits will not be reduced or terminated pending a decision on the appeal.

2. Time limit for requesting a hearing after action.

If the client fails to reply within the time limit for a hearing prior to action, as required, the proposed action shall take effect. If he requests a hearing after the action, a hearing shall be granted provided the request is received within 30 days from the effective date of action.

When a request for a hearing is not filed within 30 days of the date notice of an action is given, the hearing officer is without jurisdiction to hear an appeal and the time for taking an appeal will not be enlarged.

3. An appeal is filed when it is received and filed in the Deputy Director's office, not at the moment it is placed in the mail.

#### 30706 Dismissal of Requests

The hearing officer shall dismiss or deny a request for a Fair Hearing:

1. where it has been withdrawn by the appellant in writing; or

2. where the appellant has abandoned his request by failing without good cause, to appear by himself or by an authorized representative at a scheduled hearing.

Good cause for failure to appear at a hearing may

include, but is not limited to the following:

- death in the family;
- personal injury or illness;
- sudden and unexpected emergencies;
- failure to receive the hearing notice

3. when the request is not received within the specified 30 day time period.

The hearing officer will notify both the appellant and the Contractor if a request for a hearing is dismissed.

#### 30707 Prohibition Against Termination

If the recipient requests a hearing within the timely notice period, assistance will not be suspended, reduced, discontinued, or terminated (but is subject to recovery by DHSS if its action is sustained on appeal) until a decision is reached after a fair hearing, unless the recipient specifically requests reduction or discontinuance.

#### 30708 Notification of Time and Place of Hearing

The time, date, and place of the hearing will be arranged so that the hearing is accessible to the appellant. Advance written notice will be provided to all parties involved to permit adequate preparation of the case. The notice will:

1. Advise the appellant or representative of the name, address, and phone number of the person to notify in the event it is not possible for the appellant to attend the scheduled hearing;

2. Stipulate that the hearing request will be dismissed if the appellant or his representative fails to appear for the hearing without good cause;

3. Include the hearing procedures and any other information that would provide the appellant with an understanding of the proceedings that would contribute to the effective presentation of the individual's case and will include fair hearing summary and documents filed for the hearing;

4. Explain that the appellant has the right to bring an attorney or other representative to his hearing;

5. Explain that the appellant may present any information that he desires at the hearing;

6. Explain that the appellant or representative may examine the record prior to the hearing.

#### 30709 Responses to Hearing Requests

Upon receipt of a request for a fair hearing, the Contractor shall prepare and submit a hearing summary to the Hearing Office within 10 working days. Actions in the matter being appealed should be explained in concise statements and include citations to the policy upon which the action is based. The names and addresses of persons that the Contractor expects to call to testify will be included in the hearing summary.

Upon review, the hearing officer will set a prompt date for the hearing and notify all parties.

**30710 Appellant's Opportunities at a Hearing**

At the hearing the appellant or his representative will have the opportunity to:

1. Examine the case records and documents;
2. Present his case by himself or with the aid of a representative or counsel;
3. Bring witnesses;
4. Submit evidence to establish all pertinent facts and circumstances;
5. Advance any argument without interference;
6. Question or refute any testimony or evidence including the opportunity to confront and cross-examine adverse witnesses;
7. Be provided with interpreters or mechanical facilities to overcome language or other communication handicaps;
8. Withdraw his request for a hearing at any time.

**30711 Fair Hearing Procedures**

The hearing officer will appropriately introduce the purpose of the meeting, the individuals and roles of those in attendance, and generally "set the stage" to assure the appellant of his right to be heard. The hearing officer may, in his discretion, deal with any preliminary matters prior to beginning the case.

The hearing officer shall conduct the hearing in an informed fashion, consistent however with the procedural rights of the Department and the claimant to a courteous, fair, and fairly conducted hearing consistent with due process and the requirements of the federal regulation.

At the discretion of the hearing officer, the Contractor and the claimant will each be given an opportunity to make brief opening statements. The Contractor will present its case first. This shall include the presentation of all witnesses to give testimony and all documents and other evidence that is admissible to prove its case. The other party may cross-examine each witness and may raise any legal basis for exclusion of any evidence at appropriate times during the hearing.

The other party may present any witnesses to give testimony (and may testify himself) and other evidence which is admissible to prove his case. If evidence or testimony is presented, the other party shall have the opportunity to raise any legal basis for its exclusion and the opportunity to cross examine witnesses at the appropriate time during the proceeding.

If the second party has presented any evidence, the first party may, in the discretion of the hearing officer, present rebuttal evidence.

The parties will be given an opportunity to briefly summarize their cases in closing remarks. Such closing remarks may summarize evidence and present legal

argument for the adoption of one position against the adoption of the other.

**30712 Decisions of the Hearing Officer**

Decisions of the State hearing officer will be based exclusively on evidence introduced at the hearing. The decision of the hearing officer shall be in writing and shall be sent to the appellant and the Contractor as soon as it is made. The decision of the hearing officer is the final decision of DSS.

**30713 Corrective Action**

When the hearing decision is favorable to the appellant, or when the Contractor decides in favor of the appellant prior to the hearing, the Contractor will promptly make corrective payments (retroactive to the date incorrect action was taken).

**30714 Requests for Continuance**

Either party to a hearing may request that the hearing officer continue the hearing on a different date. The request for a continuance must specify the reason that a continuance is needed. Examples of requests for which a continuance should be granted, include, but are not limited to: illness of a party or witness; extreme inclement weather; request for additional time to prepare for the hearing.

The hearing officer will respond to the request not later than ten (10) days after the request is received.

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**DEPARTMENT OF NATURAL  
RESOURCES AND  
ENVIRONMENTAL CONTROL**

**DIVISION OF AIR AND WASTE MANAGEMENT  
WASTE MANAGEMENT SECTION**

Statutory Authority: 7 Delaware Code, Chapter 60  
(7 Del.C. Ch. 60)

**1. TITLE OF THE REGULATIONS:**

Regulations Governing Solid Waste

**2. BRIEF SYNOPSIS OF THE SUBJECT,  
SUBSTANCE AND ISSUES:**

Revisions are being proposed to many sections of the regulations. See attachment for a section-by-section synopsis of the changes.

**3. POSSIBLE TERMS OF THE AGENCY ACTION:**

None

**4. STATUTORY BASIS OR LEGAL AUTHORITY TO  
ACT:**

Title 7 Delaware Code, Chapter 60

## 5. OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL:

None

## 6. NOTICE OF PUBLIC COMMENT:

A public hearing will be held on Tuesday, July 25, 2000, from 7:00 p.m. to 10:00 p.m. in the auditorium of the Richardson and Robbins Building, 89 Kings Highway, Dover DE.

## 7. PREPARED BY:

Janet T. Manchester(302) 739-3689 June 13, 2000

## Synopsis of proposed revisions to Regulations Governing Solid Waste

### Section 2: Scope and Applicability

- Revise the agricultural waste exemption, to clarify that land application of agricultural wastes does not constitute disposal.
- Move provisions pertaining to composting and recycling approvals from "Exemptions" subsection and place them in a new subsection, "Approvals".

### Section 3: Definitions

- Add definitions for the terms **compost**, **composting**, and **composting facility**.
- Revise definitions of **agricultural waste**, **bottom ash**, **final cover**, **fly ash**, **Secretary**, and **vehicle**.
- Delete the term **limited transporter**.

### Section 4: Permit Requirements and Administrative Procedures

- Add a provision requiring permittees to abide by the conditions of their permit.
- Provide that the cost of advertising a permit application may (rather than shall) be borne by the applicant.
- Clarify what is meant by timely application for permit renewal.
- Revise procedures for transferring a permit, and increase the notification time from 15 to 90 days.
- Change references to "Solid Waste Management Branch" to read "Solid and Hazardous Waste Management Branch".
- Add a provision that third-party review of financial assurance documentation may be conducted by professionals other than Certified Public Accountants.
- Add a provision specifying that all information provided on a solid waste permit application is

certified to be true, accurate, and complete by the applicant's signature.

- Add provisions requiring the engineering report submitted as part of an application for a resource recovery facility or an infectious waste management facility permit to be prepared and signed by a Professional Engineer registered in Delaware.
- For thermal recovery facilities, revise wording pertaining to the ash testing protocol.
- For transfer station submittal requirements, remove the reference to a Coastal Zone Permit.

### Section 5: Sanitary Landfills

- For a natural liner, revise wording pertaining to test methods to be used in hydraulic conductivity testing.
- For ground water sampling and analysis, revise wording pertaining to test methods.
- Revise the provision pertaining to regulated hazardous waste that may not be disposed of at a sanitary landfill in Delaware.
- Revise and clarify the procedure for declaring, on a property deed, that the property has been used as a solid waste landfill and that the use of the property is therefore subject to restrictions.

### Section 6: Industrial Landfills

- For a natural liner, revise wording pertaining to test methods to be used in hydraulic conductivity testing.
- For ground water sampling and analysis, revise wording pertaining to test methods.
- Revise and clarify the procedure for declaring, on a property deed, that the property has been used as a solid waste landfill and that the use of the property is therefore subject to restrictions.

### Section 7: Transporters

- Revise the permit exemption for certain types of solid waste generated on a farm to clarify that the exemption applies only to farms located in Delaware.
- Revise the annual reporting requirement, to require reporting by weight only, and to require accurate reporting.
- Add a provision to require that annual reports be submitted once a year within 90 days after the end of the calendar year.
- Add a provision to prohibit a transporter who has been denied a transporter permit from becoming a

subcontractor under another transporter's permit for a period of one-year.

- Revise financial responsibility requirements for Infectious Waste Transporters and for Dry Waste Only transporters, to make them consistent with federal requirements.

Section 9: Resource Recovery Facilities

- Revise provisions pertaining to closure of a facility, to specify that the proposed closure activity will be subject to public notice.
- Revise the procedure whereby the Department will approve closure of a facility.

Section 10: Transfer Stations

- Remove the provision prohibiting commingling of solid waste generated in Delaware with solid waste generated outside of Delaware.
- Revise provisions pertaining to closure of a facility, to specify that the proposed closure activity will be subject to public notice.
- Revise the procedure whereby the Department will approve closure of a facility.

Section 11: Special Wastes Management (Part 1 - Infectious Waste)

- Remove the provision allowing a transporter to complete a consolidated manifest for small quantity infectious waste generators that he or she services.
- Add wording to clarify that transporters of infectious waste must have obtained a transporter permit from the Department.
- Move the provisions pertaining to annual reporting requirements for generators and transporters of infectious waste from Subsection P (Manifest Requirements) to Subsection L (Recordkeeping and Reporting Requirements).

**PLEASE NOTE THAT DUE TO SPACE CONSTRAINTS THE TEXT OF THE PROPOSED AMENDMENTS TO THE STATE OF DELAWARE DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL REGULATIONS GOVERNING THE CONTROL OF WATER POLLUTION ARE NOT BEING PUBLISHED. THE FULL TEXT IS AVAILABLE FROM THE REGISTRAR OR FROM THE REGISTER OF REGULATIONS WEBSITE AT [HTTP://WWW.STATE.DE.US/RESEARCH/DOR/REGISTER.HTM](http://www.state.de.us/research/dor/register.htm)**

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**DIVISION OF WATER RESOURCES**

Statutory Authority: 7 Delaware Code,  
Section 6010 (7 Del.C. 6010)

**Proposed Amendments to the State of Delaware  
Department of Natural Resources and Environmental  
Control**

**Regulations Governing the Control of Water Pollution**

**Brief Synopsis of the Subject, Substances and Issues:**

The Department of Natural Resources and Environmental Control is proposing to revise its Regulations Governing the Control of Water Pollution by withdrawing all but Section 9 of the current regulations and replacing the current regulations with the proposed amendments.

The Department's current water pollution control regulations were first promulgated in 1974 and last amended in 1983. Portions have been updated or revised since the 1983 amendments. The Department promulgated regulations for on-site treatment and disposal systems in 1985, regulations for the land treatment of wastes in 1988 and General Permit Program requirements that provide general NPDES permit coverage for storm water discharges that are "associated with industrial activities" in 1993 and 1998. None of those regulatory actions affected the basic tenets of the Department's NPDES permit program, however. The focus of this current effort is to update the Department's NPDES regulations to include provisions that are equivalent to those promulgated by the United States Environmental Protection Agency. ("NPDES" is an acronym for the "National Pollutant Discharge Elimination System", a federal regulatory program designed to control "point source" discharges of pollutants to the nation's waters. Although Congress entrusted the responsibility for administering the NPDES Program to the United States Environmental Protection Agency, it provided for the delegation of that authority to the individual states. EPA delegated its authority for the issuance and administration of NPDES permits to the State of Delaware in 1974.)

The new regulations will include all statutory and regulatory changes that have occurred since the rules were last revised.

Along with the updates in the NPDES permit program, the Department is proposing to include regulations that formalize a periodic assessment of municipal treatment plant performance and infrastructure needs. In addition, provisions are being proposed to address administrative procedures for evaluating and issuing State certification that an activity will be conducted in such a manner that won't violate the applicable surface water quality criteria or standards. Such certification is required under federal law for any activity that involves a federal license or permit.

**Possible Terms of the Agency Action:**

The regulation has no expected sunset.

**List of Other Regulations That May Be Affected  
by the Proposal:**

State of Delaware Surface Water Quality Standards

**Notice of Public Comment:**

The Department of Natural Resources and Environmental Control, Division of Water Resources, will hold a public hearing on Tuesday, August 29, 2000, beginning at 1:30 p.m., in the auditorium of the Richardson and Robbins Building, 89 Kings Highway, Dover, Delaware, to receive testimony on the proposed amendments to the Department's Regulations Governing the Control of Water Pollution.

The proposed amendments are published here today. For additional information, or to request copies of the current regulations or the proposed amendments, or both, please contact Paul Janiga, Surface Water Discharges Section, at 302-739-5731 (FAX: 302-739-8369; e-mail: pjaniga@state.de.us).

The procedures for public hearings are established in 7 Del.C. §6006 and 29 Del.C. §10117. Inquiries regarding the public hearing should be directed to R. Robert Thompson at 302-739-4403. Statements and testimony may be presented orally or in written form at the hearing. It is requested that those interested in presenting statements register in advance by mail with the Hearing Officer. The deadline for inclusion of written comments in the hearing record is the conclusion of the hearing. Written statements may be presented prior to the hearing and should be addressed to: R. Robert Thompson, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901.

**Prepared by:**

Paul Janiga, Surface Water Discharges Section, 739-5731.

**PLEASE NOTE THAT DUE TO SPACE CONSTRAINTS THE TEXT OF THE PROPOSED AMENDMENTS TO THE STATE OF DELAWARE DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL REGULATIONS GOVERNING THE CONTROL OF WATER POLLUTION ARE NOT BEING PUBLISHED. THE FULL TEXT IS AVAILABLE FROM THE REGISTRAR OR FROM THE REGISTER OF REGULATIONS WEBSITE AT [HTTP://WWW.STATE.DE.US/RESEARCH/DOR/REGISTER.HTM](http://www.state.de.us/research/dor/register.htm)**

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**Symbol Key**

Roman type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text added at the time of the proposed action. Language which is ~~stricken~~ through indicates text being deleted. **[Bracketed Bold language]** indicates text added at the time the final order was issued. ~~[Bracketed stricken through]~~ indicates language deleted at the time the final order was issued.

**Final Regulations**

The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the Register of Regulations. At the conclusion of all hearings and after receipt within the time allowed of all written materials, upon all the testimonial and written evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended; (3) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported by its findings on the evidence and information received; (4) The exact text and citation of such regulation adopted amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The signature of at least a quorum of the agency members.

The effective date of an order which adopts, amends or repeals a regulation shall be not less than 10 days from the date the order adopting, amending or repealing a regulation has been published in its final form in the Register of Regulations, unless such adoption, amendment or repeal qualifies as an emergency under §10119.

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**DEPARTMENT OF  
ADMINISTRATIVE SERVICES  
DIVISION OF PROFESSIONAL REGULATION  
BOARD OF FUNERAL SERVICES**

Statutory Authority: 24 Delaware Code,  
Section 3105(a) (24 **Del.C.** 3105(a))

A public hearing was held on May 31, 2000 to receive comments at the regularly scheduled meeting of the Board of Funeral Services. The Board considered proposed changes to Rules 2.2 - 2.7 pursuant to the authority in 24 Del. C. §3105(a) as published in the Register of Regulations, Vol. 3, Issue 10, April 1, 2000.

**Summary of the Evidence and Information Submitted**

No written or verbal comments were received.

**Findings of Fact**

Rule changes are necessary to reflect changes in legislation with respect to qualifications for licensure and to define the "equivalent" of an Associate Degree for consistency.

**Decision and Effective Date**

The Board of Funeral Services hereby adopts the changes as

published to be effective 10 days following final publication in the Register of Regulations.

**Text and Citation**

The text of the rules promulgated appeared in the Register of Regulations, Vol. 3, Issue 10, April 1, 2000 as follows:

2.2 An applicant who has attended a school or college fully accredited by the American Board of Funeral Service Education "ABFSE" or its successor and who, after attending such ABFSE accredited school or college, has received an Associate degree or its equivalent in mortuary science, wherein such "degree" required the successful completion of at least sixty (60) semester credit hours, shall be eligible for licensure as a funeral director in accordance with the education requirements contained within 24 Del. C. §3107. The applicant shall request that a copy of an official transcript be sent to the Board.

2.3 The equivalent of an Associate Degree as that term is used in 24 Del. C. §3107 and herein is a certificate in mortuary science that required a minimum of thirty (30) semester credit hours. In addition to said certificate, sufficient semester credit hours earned from a regionally accredited institution of postsecondary education so that the applicant has earned a total of at least sixty (60) semester credit hours are required.

2.4 The Division, upon request of a registered intern or applicant seeking licensure via reciprocity, shall administer

the State examination required by 24 Del. C. §3107(a)(3) based solely upon the laws and regulations of Delaware which may govern, impact on, and relate to the profession including preneed funeral service contracts, consumer protection law and regulations, and laws and regulations governing crematories and cemeteries. An applicant for full licensure, whether via initial or reciprocal licensure, shall be deemed to have successfully passed the state examination with a minimum grade of 70%. The national examination required by 24 Del.C. §3107(a)(2) may be taken before or during the internship.

2.5 As required by 24 Del. C. §3107(a)(4), an applicant other than one seeking licensure via reciprocity shall satisfactorily complete an internship of one year's duration in a licensed Delaware funeral establishment under the auspices of a licensed Delaware funeral service practitioner. In order for an applicant to apply for an internship, the applicant shall have certified on a form approved by the Board that he or she has graduated from an accredited high school or its equivalent, and has received an Associate Degree or its equivalent in mortuary science, consisting of sixty (60) credit hours, from a school fully accredited by the ABFSE or its successor. Satisfactory completion of an internship requires a minimum of twenty-five (25) embalming reports and four (4) completed quarterly work reports evidenced by a notarized statement from the sponsor. An intern may be given one extension of his or her internship for an additional year.

Board of Funeral Services  
 Gary J. Wallick, President  
 Charles P. Arcaro, Secretary  
 Richard Harra  
 J. Thomas Sturgis, Jr., Ed.D.  
 Barbara Robbins  
 Kelly Ann Pepper  
 Lyle Dabson

- 1.0 Duties of the Officers
- 2.0 Licensure Requirements
- 3.0 Federal Trade Commission Regulations
- 4.0 Establishment Permits
- 5.0 Duplicate Certificate
- 6.0 Suspension- Revocation or Lapse of  
Funeral Director's License
- 7.0 Cash Advance
- 8.0 Code of Ethics
- 9.0 Continuing Education Regulations
- 10.0 Treatment Option for Chemically Dependent  
or Impaired Professionals

#### 1.0 Duties of the Officers

1.1 The President shall preside at all meetings, call meetings, sign certificates with other Board members or

other forms that may be required by him or her by law.

1.2 In the absence of the President, the Secretary shall preside at the meetings and call meetings when the President is absent. However, the signatory duties of the President may not be transferred to the Secretary.

1.3 In accordance with 29 Del.C. §8807, the Division of Professional Regulation shall maintain and keep all records of licensed funeral directors in the State of Delaware issuing a number and date to each license.

1.4 The Division shall also cause to be collected all fees including license application fees, renewal fees or any other fee required to be paid in accordance with the provisions of 24 Del.C. Ch. 31, et.seq.

1.5 In accordance with the Freedom of Information Act, 29 Del.C. §10004(c), the Division of Professional Regulation shall publish an agenda of all meetings which shall include the time, dates and places of said meetings and an agenda. The Board shall also give public notice of the regular meetings and its intent to hold an executive session closed to the public at least seven days in advance. However, the agenda may be subject to change to include additional items not on the agenda including executive sessions closed to the public which arise at the time of the Board's meeting.

1.6 The Division of Professional Regulation shall insure that accurate and detailed minutes of all business to come before the Board at all Board meetings be transcribed in accordance with 29 Del.C. §8807 and 24 Del.C. §3103(d).

#### 2.0 Licensure Requirements

2.1 Requirements for licensing of those applying for a Funeral Director's license in the State of Delaware. The qualifications of applicants for licensure as funeral director are contained in 24 Del.C. §3107(a)(1)-(9) and 24 Del.C. §3109.

~~2.2 A year of academic training shall consist of at least thirty (30) semester hours successfully completed by the applicant at an accredited college or university. Two years of academic training shall consist of at least sixty (60) semester hours successfully completed by the applicant at an accredited college or university. The applicant shall request that a copy of an official transcript be sent to the Board.~~

~~2.3~~ 2.2 An applicant who has attended a school or college fully accredited by the American Board of Funeral Service Education "ABFSE" or its successor and who, after attending such ABFSE accredited school or college, has received an Associate degree or its equivalent in Funeral Services, mortuary science, wherein such "degree" required the successful completion of at least sixty (60) semester credit hours, shall be eligible for licensure as a funeral director in accordance with the educational requirements contained within 24 Del.C. §3107. The applicant shall request that a copy of an official transcript be sent to the Board.

2.3 The equivalent of an Associate Degree as that term is used in 24 Del.C. §3107 and herein is a certificate in mortuary science that required a minimum of thirty (30) semester credit hours. In addition to said certificate, sufficient semester credit hours earned from a regionally accredited institution of postsecondary education, so that the applicant has earned a total of at least sixty (60) semester credit hours, are required.

2.4 In order for an applicant to apply for an internship of one year's duration under the auspices of a licensed Delaware Funeral Services practitioner pursuant to 24 Del.C. §3107(a)(4), the applicant shall have certified that he or she has graduated from an accredited high school or its equivalent, and has received an Associate Degree in mortuary science, consisting of sixty (60) credit hours, from a school fully accredited by the ABFSE or its successor.

2.5 2.4 The Division, upon request of an eligible applicant a registered intern or applicant seeking licensure via reciprocity, shall administer the State examination required by 24 Del.C. §3107(a)(3) based solely upon the laws and regulations of Delaware which may govern, impact on, and relate to the profession including preneed funeral service contracts, consumer protection law and regulations, and laws and regulations governing crematories and cemeteries. An applicant for full licensure, whether via initial or reciprocal licensure, prior to applying for the Division's test based upon the law and regulations of Delaware ("State" examination) shall first sit for and successfully complete the national examination required by 24 Del.C. §3105 (a)(3), the written examination prepared by a national professional organization recognized by the ABFSE by a passing score determined by the organization preparing the test recognized by the ABFSE. shall be deemed to have successfully passed the state examination with a minimum grade of 70%. The national examination required by 24 Del.C. §3107(a)(2) may be taken before or during the internship.

2.6 2.5 As required by 24 Del.C. §3107(a)(4), an applicant other than one seeking licensure via reciprocity shall satisfactorily complete an internship of one year's duration in a licensed Delaware funeral establishment under the auspices of a licensed Delaware funeral service practitioner. An applicant must successfully complete the required total of sixty (60) semester hours of academic training prior to beginning the internship. An application to sit for the State examination shall be accompanied by a notarized statement from the Funeral Service Practitioner under whom the applicant "intern" as defined by 24 Del.C. §3101(8) served his internship. The notarized statement shall attest that the applicant has concluded his/her internship and submitted to the Board satisfactory evidence of the completion of twenty-five (25) embalming reports and four (4) completed quarterly work reports. In order for an applicant to apply for an internship, the applicant shall have

certified on a form approved by the Board that he or she has graduated from an accredited high school or its equivalent, and has received an Associate Degree or its equivalent in mortuary science, consisting of sixty (60) credit hours, from a school fully accredited by the ABFSE or its successor. Satisfactory completion of an internship requires a minimum of twenty-five (25) embalming reports and four (4) completed quarterly work reports evidenced by a notarized statement by the sponsor. An intern may be given one extension of his or her internship for an additional year.

2.7 The State examination shall consist of questions pertaining to the law and regulations of the State of Delaware and which may govern, impact on, and relate to the profession including preneed funeral services contracts, consumer protection law and regulations, and laws and regulations governing crematories and cemeteries. An applicant shall be deemed to have successfully passed the "state examination" with a minimum grade of 70%.

### 3.0 Federal Trade Commission Regulations

A licensed funeral director in the State of Delaware shall comply with all Federal Trade Commission Regulations governing the pricing of funeral services and merchandise and the method of payment for funeral services as defined under 24 Del.C. §3101(7). Upon the issuance of a funeral director's license, a licensed funeral director represents that he/she is familiar with all Federal Trade Commission rules and regulations and shall abide by the same. A licensee may be subject to discipline pursuant to 24 Del.C. Ch.31, et seq. if these rules or regulations have been violated by the licensee.

### 4.0 Establishment Permits

4.1 The requirements for the issuance, continuance, and proper maintenance of a funeral establishment permit are contained in 24 Del.C. §3117. In accordance with 24 Del.C. §3117(a)(2), the funeral establishment shall be conducting funeral services from a building that is appropriate as defined in 24 Del.C. §3101(5). All establishments, both newly issued and those grandfathered by 24 Del.C. §3117 (a)(1), shall in said building have preparation rooms which shall be locked. Licensed funeral directors shall exercise full control over preparation rooms and supplies.

4.2 All funeral establishments provided a permit in accordance with the requirements of 24 Del.C. §3117 shall, in addition to conforming with all safety requirements of the State Department of Health and Social Services, provide the following:

4.2.1 A room for the preparation and embalming of human remains;

4.2.2 Said preparation room shall contain embalming equipment and supplies.

4.3 Funeral Establishment Permit: Circumstances for Termination and Continuation.

4.3.1 The statutory requirements for the issuance of a funeral establishment permit are contained in 24 **Del.C.** §3117.

4.3.2 To be exempt from the provisions of 24 **Del.C.** §3117(a)(2), the funeral establishment shall have been maintained, operated and conducted on a continuous basis prior to September 6, 1972 until the present date. Further, only the record owner of the funeral establishment shall be entitled to obtain said exemption. No assignment of the exemption rights contained in 24 **Del.C.** §3121 (a)(2) is permitted and no other licensed funeral director may apply for or be assigned said rights.

4.3.3 If a licensed funeral director relocates or otherwise moves a funeral establishment that has been granted an exemption pursuant to the provision of 24 **Del.C.** §3117(a)(2) from its original location, the exemption allowed under 24 **Del.C.** §3117(a)(2) shall immediately become null and void. For purposes of this section the term "move" or "relocate" is defined as to place such establishment outside the original building's location at its exact address of record unless the building where the funeral establishment permit is contained is renovated.

#### 5.0 Duplicate Certificate

Any licensed funeral director may obtain a duplicate funeral director's certificate upon proof of satisfactory evidence to the Board that the original has been lost or destroyed and a payment of a fee as set by the Division of Professional Regulation.

#### 6.0 Suspension- Revocation or Lapse of Funeral Director's License

During any period a licensed funeral director's license has lapsed, been revoked or suspended by the Board in accordance with 24 **Del.C.** §§3111 or 3114, no other licensed funeral director in the State of Delaware may register death certificates or secure burial permits for the licensee whose license has been revoked, suspended or has lapsed. Nor shall the licensee whose license has lapsed, been revoked or suspended by the Board, be able to register death certificates or secure burial permits. The Board may notify the Division of Public Health, the Department of Health and Social Services, the Medical Examiner's Office or other appropriate state or federal agency that said funeral director is prohibited from practicing funeral services as defined by 24 **Del.C.** Ch. 31.

#### 7.0 Cash Advance

7.1 A licensed funeral director in the State of Delaware is prohibited from billing or causing to be billed any item that is referred to as a "cash advance" item unless the net amount paid for such item is for funeral services in the same amount as is billed by the funeral director. A cash advance item is payment made by the funeral director for the consumer to a third party including but not limited to

cemetery fees, crematory fees, death certificates and florists.

7.2 The effective date of these regulations is the 6th day of December, 1989 in accordance with 29 **Del.C.** §10118 (b).

7.3 The following rules are adopted by the board as a supplement to the Rules and Regulations governing the State Board of Funeral Services, previously adopted and promulgated on the 6th day of December, 1989 pursuant to 24 **Del.C.** §3105 (a)(1) and the Administrative Procedures Act, 29 **Del.C.** §10115.

#### 8.0 Code of Ethics

8.1 The following is adopted as the code of ethics for all funeral service licensees in the State of Delaware.

8.1.1 As funeral directors, we herewith fully acknowledge our individual and collective obligation to the public, especially to those we serve, our mutual responsibilities for the proper welfare of the funeral services profession.

8.1.2 To the public we pledge: vigilant support of public health laws; proper legal regulations for the members of our profession; devotion to high moral and service standards; conduct befitting good citizens, honesty in all offerings of service and merchandise to the public and all business transactions.

8.1.3 To those we serve we pledge: confidential business and professional relationships; cooperation with the customs, laws, religions and creeds; observance of all respect due to the deceased; high standards of confidence and dignity in conduct of all services; truthful representation of all services and merchandise.

8.1.4 To our profession we pledge: support of high educational standards and proper licensing law; encouragement of scientific research; adherence to sound business practices; adoption of improved technique; observance of all the rules of fair competition and maintenance of favorable personnel relations.

#### 9.0 Continuing Education Regulations

##### 9.1 Board Authority

9.1.1 This rule is promulgated under the authority of 24 **Del.C.** §3105 which grants the Board of Funeral Services (hereinafter "the Board") authority to provide for rules for continuing funeral services education as a prerequisite for license renewal.

##### 9.2 Requirements

9.2.1 Every licensed funeral director in active practice shall complete at least 10 hours/credits of approved continuing education (hereinafter "CE") during the two year licensure period prior to the time of license renewal. Licensees who earn more than the required amount of CE credit hours during a given licensure period may carry over no more than 50% of the total CE credit hours required for the next licensure period.

9.2.2 When a Delaware licensee on inactive status files a written application to return to active practice with the Board, the licensee shall submit proof of having completed the required CE credit hours for the period just prior to the request to return to active practice.

9.2.3 Upon application for renewal of a license, a funeral director licensee shall submit to the Board proof of completing the required number of CE credit hours.

**9.3. Waiver of the CE Requirement**

9.3.1 The Board has the power to waive any part of the entire CE requirement for good cause if the licensee files a written request with the Board. For example, exemptions to the CE requirement may be granted due to health or military service. Application for exemption shall be made in writing to the Board by the applicant for renewal. The Board shall decide the merits of each individual case at a regularly scheduled meeting.

9.3.2 Newly licensed funeral directors, including those newly licensed by reciprocity, are exempt during the time from initial licensure until the commencement of the first full licensure period.

**9.4. Continuing Education Program Approval**

9.4.1 Each contact hour (at least fifty minutes) is equivalent to 1.0 CE credit hour. One college credit hour is equivalent to 5 CE credit hours.

9.4.2 Eligible program providers or sponsors include but are not limited to, educational institutions, government agencies, professional or trade associations and foundations and private firms.

9.4.3 Sources of CE credits include but are not limited to the following:

- Programs sponsored by national funeral service organizations.
- Programs sponsored by state associations.
- Program provided by local associations.
- Programs provided by suppliers.
- Independent study courses for which there is an assessment of knowledge.
- College courses.

9.4.4 The recommended areas include but are not limited to the following:

- Grief counseling
- Professional conduct, business ethics or legal aspects relating to practice in the profession.
- Business management concepts relating to delivery of goods and services.
- Technical aspects of the profession.
- Public relations.
- After care counseling.

9.4.5 Application for CE program approval shall include the following:

9.4.5.1 Date and location.

9.4.5.2 Description of program subject, material and content.

9.4.5.3 Program schedule to time segments in subject content areas for which approval of, and determination of credit is required.

9.4.5.4 Name of instructor(s), background, expertise.

9.4.5.5 Name and position of person making request for program approval.

9.4.6 Requests for CE program approval shall be submitted to the Board on the application provided by the Board. Application for approval may be made after the program; however, if the program is not approved, the applicant will be notified and no credit given.

9.4.7 Approval of CE credits and program formats by the Committee shall be valid for a period of two years from the date of approval. Changes in any aspect of the approved program shall render the approval invalid and the presenter will be responsible for making reapplication to the Committee.

9.4.8 Upon request, the Board shall mail a current list of all previously approved programs.

**9.5. Continuing Education Committee**

9.5.1 The Board of Funeral Services shall appoint a committee known as the Continuing Education Committee. The Committee shall consist of the following who shall elect a chairperson:

9.5.1.1 One (1) Board member (non-licensed).

9.5.1.2 One (1) non-Board member who shall be a licensed funeral director who is owner/operator of a funeral establishment.

9.5.1.3 One (1) non-Board member who shall be a licensed funeral director who does not own or operate a funeral establishment.

9.5.2 Membership on this Committee shall be on a rotating basis, with each member serving a three year term and may be eligible for reappointment. The Committee members shall continue to serve until a new member is appointed.

9.5.3 The Continuing Education Committee shall oversee matters pertaining to continuing education and make recommendations to the Board with regard to approval of submitted programs for CE by licensees and with regard to the Board's review of audited licensees. The Board shall have final approval on all matters.

**9.6 Certification of Continuing Education - Verification and Reporting**

9.6.1 The program provider/sponsor has sole responsibility for the accurate monitoring of program attendance. Certificates of attendance shall be supplied by the program provider/sponsor and be distributed only at the completion of the program.

9.6.2 Verification of completion of an independent study program will be made with a student transcript.

9.6.3 The funeral director licensee shall maintain all original certificates of attendance for CE programs for the entire licensure period. Proof shall consist of completed CE form provided by the Board and shall be filed with the Board on or before thirty (30) days prior to the expiration date of the biennial renewal period.

9.6.4 Applications for renewal may be audited by the Board to determine whether or not the recommended requirements of continuing education have been met by the licensee.

9.6.5 If a licensee is found to be non-compliant in continuing education, the licensee's license shall lapse at the expiration of the present licensing period. The Board shall reinstate such license within twelve (12) months of such lapse upon presentation of satisfactory evidence of successful completion of continuing education requirements and upon payment of all fees due.

9.6.6 Programs approved for continuing education credit by another state funeral board other than Delaware shall be automatically approved for all Delaware licensees upon written application and verification of CE credits by the applicable state board.

#### 10.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

10.1 If the report is received by the chairperson of the regulatory Board, that chairperson shall immediately notify the Director of Professional Regulation or his/her designate of the report. If the Director of Professional Regulation receives the report, he/she shall immediately notify the chairperson of the regulatory Board, or that chairperson's designate or designates.

10.2 The chairperson of the regulatory Board or that chairperson's designate or designates shall, within 7 days of receipt of the report, contact the individual in question and inform him/her in writing of the report, provide the individual written information describing the Voluntary Treatment Option, and give him/her the opportunity to enter the Voluntary Treatment Option.

10.3 In order for the individual to participate in the Voluntary Treatment Option, he/she shall agree to submit to a voluntary drug and alcohol screening and evaluation at a specified laboratory or health care facility. This initial evaluation and screen shall take place within 30 days following notification to the professional by the participating Board chairperson or that chairperson's designate(s).

10.4 A regulated professional with chemical dependency or impairment due to addiction to drugs or alcohol may enter into the Voluntary Treatment Option and continue to practice, subject to any limitations on practice the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional, deem necessary,

only if such action will not endanger the public health, welfare or safety, and the regulated professional enters into an agreement with the Director of Professional Regulation or his/her designate and the chairperson of the participating Board or that chairperson's designate for a treatment plan and progresses satisfactorily in such treatment program and complies with all terms of that agreement. Treatment programs may be operated by professional Committees and Associations or other similar professional groups with the approval of the Director of Professional Regulation and the chairperson of the participating Board.

10.5 Failure to cooperate fully with the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate in regard to the Voluntary Treatment Option or to comply with their requests for evaluations and screens may disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board chairperson or that chairperson's designate or designates shall cause to be activated an immediate investigation and institution of disciplinary proceedings, if appropriate, as outlined in subsection (h) of this section.

10.6 The Voluntary Treatment Option may require a regulated professional to enter into an agreement which includes, but is not limited to, the following provisions:

10.6.1 Entry of the regulated professional into a treatment program approved by the participating Board. Board approval shall not require that the regulated professional be identified to the Board. Treatment and evaluation functions must be performed by separate agencies to assure an unbiased assessment of the regulated professional's progress.

10.6.2 Consent to the treating professional of the approved treatment program to report on the progress of the regulated professional to the chairperson of the participating Board or to that chairperson's designate or designates or to the Director of the Division of Professional Regulation or his/her designate at such intervals as required by the chairperson of the participating Board or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate, and such person making such report will not be liable when such reports are made in good faith and without malice.

10.6.3 Consent of the regulated professional, in accordance with applicable law, to the release of any treatment information from anyone within the approved treatment program.

10.6.4 Agreement by the regulated professional to be personally responsible for all costs and charges associated with the Voluntary Treatment Option and treatment program(s). In addition, the Division of Professional Regulation may assess a fee to be paid by the regulated professional to cover administrative costs associated with the

Voluntary Treatment Option. The amount of the fee imposed under this subparagraph shall approximate and reasonably reflect the costs necessary to defray the expenses of the participating Board, as well as the proportional expenses incurred by the Division of Professional Regulation in its services on behalf of the Board in addition to the administrative costs associated with the Voluntary Treatment Option.

10.6.5 Agreement by the regulated professional that failure to satisfactorily progress in such treatment program shall be reported to the participating Board's chairperson or his/her designate or designates or to the Director of the Division of Professional Regulation or his/her designate by the treating professional who shall be immune from any liability for such reporting made in good faith and without malice.

10.6.6 Compliance by the regulated professional with any terms or restrictions placed on professional practice as outlined in the agreement under the Voluntary Treatment Option.

10.7 The regulated professional's records of participation in the Voluntary Treatment Option will not reflect disciplinary action and shall not be considered public records open to public inspection. However, the participating Board may consider such records in setting a disciplinary sanction in any future matter in which the regulated professional's chemical dependency or impairment is an issue.

10.8 The participating Board's chairperson, his/her designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional at any time during the Voluntary Treatment Option, restrict the practice of a chemically dependent or impaired professional if such action is deemed necessary to protect the public health, welfare or safety.

10.9 If practice is restricted, the regulated professional may apply for unrestricted licensure upon completion of the program.

10.10 Failure to enter into such agreement or to comply with the terms and make satisfactory progress in the treatment program shall disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board shall be notified and cause to be activated an immediate investigation and disciplinary proceedings as appropriate.

10.11 Any person who reports pursuant to this section in good faith and without malice shall be immune from any civil, criminal or disciplinary liability arising from such reports, and shall have his/her confidentiality protected if the matter is handled in a nondisciplinary matter.

10.12 Any regulated professional who complies with all of the terms and completes the Voluntary Treatment Option shall have his/her confidentiality protected unless otherwise

specified in a participating Board's rules and regulations. In such an instance, the written agreement with the regulated professional shall include the potential for disclosure and specify those to whom such information may be disclosed.

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## **DIVISION OF PROFESSIONAL REGULATION**

### **BOARD OF PHARMACY**

Statutory Authority: 24 Delaware Code,  
Section 2509 (24 Del.C. 2509)

PLEASE TAKE NOTICE, pursuant to 29 Del.C. §2509, the Delaware Board of Pharmacy has developed and proposes to adopt changes to Regulations I - Pharmacist Licensure Requirements, II Grounds for Disciplinary Proceeding, and V Dispensing. The changes to Regulation I eliminate the Continuing Education Committee, transferring the Committee's responsibilities to the Board. The conduct previously defined in Regulation II as "gross immorality" is now included in the term "unprofessional conduct". Regulation V may be amended to include a definition for "container", to clarify the activity allowed for supportive personnel to insure a final check of a prescription by a pharmacist and to allow for electronically transmitted prescriptions.

A public hearing will be held on the proposed Rules and Regulations on Wednesday, April 12, 2000 at 12:00 noon in the Jesse Cooper Building, Room 309 (third floor conference room), Federal and Water Streets, Dover, DE 19901. The Board will receive and consider input from any person on the proposed Rules and Regulations. Written comment can be submitted at any time prior to the hearing in care of Gradella E. Bunting at the above address.

This notice will be published in two newspapers of general circulation not less than twenty- (20) days before the hearing in addition to publication in the Register of Regulations. Written copies of the proposed regulations may be obtained from the Board of Pharmacy by contacting Gradella E. Bunting at the above address or calling (302) 739-4798.

### **Regulation I**

#### **Pharmacist Licensure Requirements**

##### **A. Examination Requirements**

1. In order to be eligible for examination for licensure, an applicant must have graduated from an approved school or college of pharmacy. An approved school or college of pharmacy is an institution which has established standards in its undergraduate degree program which are at least equivalent to the minimum standards for accreditation established by the American Council on Pharmaceutical Education. Provided, however, that graduates of schools or

colleges of pharmacy located outside of the United States, which have not established standards in their respective undergraduate degree programs which are at least equivalent to the minimum standards for accreditation established by the American Council on Pharmaceutical Education, shall be deemed eligible for examination for licensure by providing evidence satisfactory to the Board of Pharmacy of graduation from such school or college and by successfully passing an equivalency examination recognized by the Board of Pharmacy. Certification by the National Association of Boards of Pharmacy Foundation (NABP) Foreign Pharmacy Graduate Examination Committee (FPGEC) meets the equivalency examination requirement.

2. Candidates must obtain a passing grade of 75 on the ~~NABPLEX~~ NAPLEX Examination to be eligible for a license to practice. The Secretary will supply the grade obtained to the candidate upon receipt of a written request from that person. In addition, candidates must take and obtain a passing grade of 75 on a Jurisprudence Examination.

3. Any applicant who fails the examination shall be entitled to take a re-examination ~~on the Board's next regularly scheduled NABPLEX examination date~~. If an applicant has failed the examination three times, he/she shall be eligible to take the examination ~~at the next regularly scheduled time~~, provided that he/she produces evidence of working full-time as an intern for a period of six months between examinations or has attended an accredited college of pharmacy as a registered student for a minimum of one semester consisting of 12 credits during the interim. A certification of satisfactory completion of such work shall be furnished by the Dean of the College or the preceptor as the case may be. The applicant may continue to sit for the Examination at its regularly scheduled time in the next succeeding years, provided the applicant has fulfilled the requirement for internship or course of study required herein between each examination.

4. Three failures of the Jurisprudence Examination requires three months of internship or one semester college course of Jurisprudence prior to the applicant being eligible to re-take the Jurisprudence examination.

#### B. Practical Experience Requirements

1. Applicant must submit an affidavit indicating enrollment in good standing as a student entering the first professional year of college of pharmacy or if the applicant is a graduate of a foreign pharmacy school, produce evidence that he has passed an equivalency examination by the Board.

2. Persons who register as interns in the State of Delaware shall, in accordance with the requirements of 24 Del. C. §2515, complete not less than 1500 hours of Board approved practical experience under the supervision of a licensed pharmacist. The preceptor must certify that the

intern has successfully completed all the requirements outlined in the Responsibilities of the Intern professional assessment form. The registrant must submit an affidavit of hours currently completed and properly notarized 30 days prior to taking the examination. Applicants who have not completed all the practical experience requirements, but who have graduated from an accredited college or have been certified by the NABP Foreign Pharmacy Graduate Examination Committee are eligible to take the examination. However, applicants will not be fully licensed until all the requirements of the Statutes and Regulations are completed.

#### C. Continuing Education Requirements

1. A pharmacist must acquire 3.0 C.E.U.'s (30 hours) per biennial licensure period. No carry over of credit from one registration period to another period is permitted.

2. Hardship - Hardship exemptions may be granted by the Board of Pharmacy upon receipt of evidence that the individual was unable to complete the requirements due to circumstances beyond his control. ~~The Board may seek the advice of its Continuing Education Advisory Council in determining the granting of or length of the extension.~~

Criteria for Hardship Exemption as Recommended by the ~~Continuing Education Advisory Council~~ Board of Pharmacy:

a) Applicant must notify the Board in writing concerning the nature of the hardship and the time needed for an extension. In case of medical disability, a letter from the physician with supporting documentation to corroborate the condition and the length of time of extension needed.

b) The Board of Pharmacy will review requests. ~~The Continuing Education Advisory Council will review requests and send recommendations to the Board.~~

c) The Board will notify the registrant of its decision.

3. Persons who are newly licensed after the registration period begins, must complete continuing education units proportional to the total number of continuing education units required for the biennial licensure renewal. (1.25 hours/per month)

#### ~~D. Advisory Council on Continuing Education~~

~~The Board shall establish a council of six persons to evaluate and approve intrastate programs and to advise the Board on any matters pertinent to continuing education. Three pharmacists are to be recommended by the professional pharmacy organizations of the State; one member will represent independent pharmacists; two shall be members of the Board of Pharmacy; one shall be a pharmaceutical educator from one of the colleges located in Maryland, New Jersey or Pennsylvania. The committee will select a Chairman from among its membership. Appointments shall be for two year periods. No member may serve more than two consecutive terms.~~



**E. D. Continuing Professional Educational Programs****1. Topics of Study**

Topics of study shall be subject matter designed to maintain and enhance the contemporary practice of pharmacy.

**2. Approved Provider**

a. Any provider approved by ACPE.

b. In-state organization which meets criteria approved by the Board.

**3. Application for Delaware State Provider**

a. Any in-state organization may apply to the Board on forms provided by the Board for initial qualification as an approved provider. The Board shall accept or reject any such application by written notice to such organization within 60 days after receipt of its application. If an organization is approved, the Board will issue a certificate or other notification of qualification to it, which approval shall be effective for a period of two years and shall be renewable upon the fulfillment of all requirements for renewal as set forth by the Board.

b. The Board may revoke or suspend an approval of a provider or refuse to renew such approval if the provider fails to maintain the standards and specifications required. The Board shall serve written notice on the provider by mail or personal delivery at its address as shown on its most current application specifying the reason for suspension, revocation, or failure to renew. The provider so affected shall, upon written request to the Board within ten days after service of the notice, be granted a prompt hearing before the Board at which time it will be permitted to introduce matters in person, or by its counsel, to defend itself against such revocation, suspension, or failure to renew, in accordance with the provisions set forth in the State's Administrative Procedures Act.

**4. Criteria for Approval of Delaware State Providers**

Only applicants who are located within the State of Delaware are eligible. Such Continuing Education providers shall provide evidence of ability to meet the following criteria or approval as a Continuing Pharmaceutical Education Provider. Other persons must apply through ACPE for approval or be acceptable to other Boards of Pharmacy that certify continuing education for relicensure.

**a. Administration and Organization**

(1) The person who is in charge of making sure that the program meets the quality standards must have a background in the administration of education programs.

(2) There shall be an identifiable person or persons charged with the responsibility of administering the continuing pharmaceutical education program.

(3) Such personnel shall be qualified for such responsibilities by virtue of experience and background.

(4) If an approved provider presents programs in co-sponsorship with other non-approved provider(s), the

approved provider has the total responsibility for assurance of quality of that program. If more than one approved provider co-sponsors a program, they have the joint responsibility for assuring quality.

**(5) Administrative Requirements include:**

(a) The development of promotional materials which state:

1. Educational objectives.

2. The target audience.

3. The time schedule of the activities.

4. Cost to the participant/covered items.

5. Amount of C.E. credit which will be awarded.

6. Credentials of the faculty, presenters, and speakers.

7. Self-evaluation instruments.

(b) Compliance with a quantitative measure for C.E. credit.

1. The number of C.E.U.'s to be awarded for successful completion shall be determined by the provider and reported in the promotional materials.

2. In cases where the participants' physical presence is required, C.E. credit will only be awarded for that portion of the program which concerns itself with the lecture(s), evaluation and question and answer segments.

3. The measure of credit shall be a fifty-minute contact hour. In the case of other programs such as home study courses, the amount of credit awarded shall be determined by assessing the amount of time the activity would require for completion by the participant if delivered in a more formal and structured format.

4. In the case of other programs such as home study courses, the amount of credit awarded shall be determined by assessing the amount of time the activity would require for completion by the participant if delivered in a more formal and structured format.

5. The provider must provide the Continuing Education Advisory Council upon request with appropriate records of successful participation in previous continuing education activities.

6. The provider must present to the participant a form or certificate as documentation of the completion of the program. The form must be at least 4" x 6" and no larger than 8 1/2" x 11". That certificate must show the name, address, and license number of the participant, the name of the provider, the title and date of the program, the number of credits earned, and an authorized signature from the provider.

7. The provider must have a policy and procedure for the handling or management of grievances and refunds of tuition.

b. Program Faculty

The selection of program faculty must be based upon proved competency in the subject matter and an ability to communicate in order to achieve a learning experience.

c. Program Content Development

(1) Such programs shall involve effective advance planning. A statement of educational goals and/or behaviors must be included in promotional materials. Such objectives and goals must be measurable and accessible to evaluation. In determining program content, providers shall involve appropriate members of the intended audience in order to satisfy the educational needs of the participants. All programs of approved providers should pertain to the general areas of professional pharmacy practices which should include, but not be limited to:

(a) The social, economic, behavioral, and legal aspects of health care,

(b) the properties and actions of drugs and drug dosage forms,

(c) the etiology, characteristics, therapeutics and prevention of the disease state,

(d) pharmaceutical monitoring and management of patients.

(2) All ancillary teaching tools shall be suitable and appropriate to the topic.

(3) All materials shall be updated periodically to include up-to-date-practice setting.

(4) It is the responsibility of the provider to be sure that the programs are continuously upgraded to meet educational objectives of the Practice of Pharmacy. The needs of the pharmacist participant must be considered in choosing the method of delivery. Innovation in presentations is encouraged within the limits of budget resources and facilities. Whatever method of delivery is used, it must include the participation of the pharmacist as much as possible within the program, i.e. questions and answers, workshops, etc.

d. Facilities

The facilities shall be adequate for the size of the audience, properly equipped (all appropriate audio/-visual media materials), well lighted and ventilated to induce a proper learning experience.

e. Evaluation

Effective evaluation of programs is essential and is the responsibility of both the provider and participant.

(1) Participant - Some evaluation mechanisms must be developed by the provider to allow the participant to assess his/her own achievement per the program.

(2) Provider evaluation - a provider shall also develop an instrument for the use of the participant in evaluating the effectiveness of the program including the level of fulfillment of stated objectives.

f. Criteria for Awarding Continuing Education Credits

Individual programs must meet the criteria for provider approval in order to be considered. In those cases where the provider is not an ACPE provider, nor a Board of Pharmacy approved provider, a registrant may complete an application provided by the Board for approval of individual programs.

(1) In order to receive full credit for non-ACPE approved programs of one-to-two hour lengths, evidence of a post test must be presented. An automatic 25% deduction if no post test presented.

(2) In order to receive full credit for non-ACPE approved programs of three or more hours in length, evidence of a pre and post test must be presented. Automatic 25% deduction if no pre and post test presented.

(3) The Committee will only assign credit for the core content of the program which explicitly relates to the contemporary practice of Pharmacy.

(4) A maximum of 2 credit hours will be awarded for First Aid or CPR/BCLS courses one time only per registration period.

(5) Credit for Instructors of Continuing Education

(a) Any pharmacist whose primary responsibility is not the education of health professionals, who leads, instructs or lectures to groups of nurses, physicians, pharmacists or others on pharmacy related topics in organized continuing education or inservice programs, shall be granted continuing education credit for such time expended during actual presentation, upon adequate documentation to the Delaware ~~Continuing Education Advisory Committee~~ of the Board of Pharmacy.

(b) Any pharmacist whose primary responsibility is the education of health professionals shall be granted continuing education credit only for time expended in leading, instructing, or lecturing to groups of physicians, pharmacists, nurses or others on pharmacy related topics outside his/her formal course responsibilities (that is, lectures or instructions must be prepared specifically for each program) in a learning institution.

(c) Credit for presentations of in-service training programs or other lectures shall be granted only for topics meeting the criteria for continuing pharmacy education, and shall be granted only once for any given program or lecture. (Any topic completely revised would be eligible for consideration.)

(d) A maximum of 6 hours (0.6 C.E.U.'s) in this category may be applied toward fulfilling the total biennial continuing education requirements.

(6) Credit for On the Job Training:

(a) ~~The Board of Pharmacy Continuing Education Advisory Council~~ does not as a general rule encourage the submission of "on the job training" for fulfilling the continuing education requirements. All programs meeting this definition shall be reviewed on an

individual basis.

(b) All programs that are submitted for credit must meet the criteria for continuing pharmacy education.

(c) No credit shall be awarded for programs required by an employer for continued employment of the employee. (Examples OSHA training, Infection Control Education required by JCAHO.)

(d) A maximum of 4 hours (0.4 C.E.U.'s) in this category may be applied toward fulfilling the total biennial continuing education requirements.

**F.E. The Verification of Continuing Education -** The pharmacist will be responsible for providing the Board with verification of completion of the required continuing education programs by such means as designated by the Board.

**G.F. Re-Entry -** A pharmacist may have his/her license reinstated by completing the following requirements:

1. Payment of any back fees;
2. Successfully obtaining a grade of 75 on an examination on the Practice of Pharmacy if the pharmacist has not practiced in three years;
3. Submission of evidence of completion of at least 20 hours of approved C.E. from the date of application for reinstatement if the pharmacist has practiced within the last three years.

## **H. G. Reciprocal Requirements**

1. The Board will accept an applicant for reciprocity provided that his practical pharmacy experience and his experience in the practice after licensure is at least equivalent to the practical pharmacy experience required by the Delaware Board.

2. Candidates for reciprocity licensure, except those who have been licensed by examination within the last year, must have practiced as a registered pharmacist for at least one year during the last three years or shall be required to pass the Board of Pharmacy's Practice of Pharmacy examination or an examination deemed equivalent by the Board and obtained a minimum grade of 75 percent.

3. Reciprocity applicants who took examinations after June 1, 1979, must have passed the National Association of Boards of Pharmacy standard examination or an examination deemed equivalent by the Board and obtained scores required for applicants for licensure by examination.

4. All reciprocal applicants must take a written jurisprudence examination and obtain a minimum grade of 75 percent. Jurisprudence examinations will be given at such times as determined by the Board. In order to be eligible to take the jurisprudence examination, all necessary paperwork must be completed and received by the Board office at least 10 days prior to the next scheduled

examination.

5. Applicants who are licensed by reciprocity must begin accruing continuing education units at a rate of 1.25 hours/per month beginning with the month of licensure.

## **Regulation II Grounds For Disciplinary Proceeding**

### **A. Gross Immorality**

~~The Board of Pharmacy interprets gross immorality as it appears in 24 Del. C. §2518(A) as including but not being limited to:~~

Unprofessional conduct shall include but is not limited to the following act(s) of a pharmacist pursuant to 24 Del.C. §2518(A):

1. Knowingly engaging in any activity which violates State and Federal Statutes and Regulations governing the practice of Pharmacy;
2. Knowingly dispensing an outdated or questionable product;
3. Knowingly dispensing the cheaper product and charging third party vendors for a more expensive product;
4. Knowingly charging for more dosage units than is actually dispensed;
5. Knowingly altering prescriptions or other records which the law requires the pharmacies or pharmacists to maintain;
6. Knowingly dispensing medication without proper authorization;
7. Knowingly defrauding any persons or government agency receiving pharmacy services;
8. Placing a signature on any affidavit pertaining to any phase of the practice of pharmacy which the pharmacist knows to contain false information.

### **B. Unprofessional Conduct**

~~Unprofessional conduct shall include but is not limited to the following act(s) of a pharmacist pursuant to 24 Del. C. §2518(A):~~

- 24.1 ~~24.~~ Fraudulently altering or forging the contents of prescriptions;
- 10 24.2 ~~24.2.~~ Payment of money or the providing of free services to a third party in return for the third party's referral of patients to the pharmacist or pharmacy;
- 11 24.3 ~~24.3.~~ Dispensing any legend drugs either for personal use or for use by another person without a valid order from a prescriber. Valid prescription means that it is not only written correctly, but is for a medical use (i.e. prescriptions written "as directed" are prohibited);
- 12 24.4 ~~24.4.~~ Unauthorized substitution;
- 13 24.5 ~~24.5.~~ Dispensing medications which are not approved for marketing by the Food and Drug Administration nor approved for marketing by State law;
- 14 24.6 ~~24.6.~~ Continuous failure to correct violations of Statutes

and Regulations noted in Board of Pharmacy communication;

15 ~~7~~. Knowingly allowing persons who are not registered pharmacists to dispense medication without proper supervision;

16 ~~8~~. Knowingly committing a fraudulent act. This would include destroying or altering any records such as prescriptions, profiles, third party vouchers and receipts;

17 ~~9~~. Knowingly misbranding a drug by using a brand name when a generic is dispensed;

18 ~~10~~. Practicing under the influence of drugs or alcohol;

19 ~~11~~. The placement of an advertisement which the pharmacist knows to be false or misleading;

20 ~~12~~. Knowingly breaching confidentiality of the patient/pharmacist relationship by supplying information to unauthorized persons;

21 ~~13~~. Engaging in activities that would discredit the profession of pharmacy;

22 ~~14~~. Attempting to circumvent the patient counseling requirements or discouraging the patients from receiving patient counseling concerning their prescription drug orders.

23 ~~15~~. Using facsimile equipment to circumvent documentation, authenticity, verification or other standards of pharmacy or drug diversion. (Effective 2/29/96)

### **Regulation V. Dispensing**

#### **A. Definitions**

1. Dispensing - To furnish or deliver a drug to an ultimate user by or pursuant to the lawful order of a practitioner; including the preparation, packaging, labeling or compounding necessary to prepare the drug for that delivery.

2. Pertinent Patient Medication Information - Information which increases the patient's ability to minimize the risks and enhance the benefits of drug use. The type of information the pharmacist should consider is contained in the latest edition of USP DI "Advice for the Patient."

3. Delivery - The transfer of a dispensed prescription to the ultimate user (patient) or his/her agent.

4. Agent - An employee of the pharmacy supervised by the pharmacist or a person acting on behalf of the ultimate user.

5. New Medication - A medication not previously dispensed by the pharmacy for the ultimate user.

6. Patient Counseling - The offer to discuss the patient's prescription made by the pharmacist or the pharmacist's designee in a face-to-face communication with the patient or his/her agent, unless in the professional judgment of the pharmacist it is deemed impracticable and in such instances, it would be permissible for the offer to counsel to be made through alternative means.

7. Compounding - The art of the extemporaneous preparation and manipulation of drugs as a result of a

practitioner's prescription order or initiative based on the practitioner/patient/pharmacist relationship in the course of professional practice, including the reconstitution of powders for administration and the preparation of drugs in anticipation of drug orders based on routine, regularly observed prescribing patterns. Pharmaceutical compounding must be in compliance with FFDCA Section 503A and any regulations promulgated by FDA concerning compounding, pertaining to this section.

8. Supportive personnel - A person who is not registered as an intern or pharmacist with the Board who may perform tasks as authorized by this Regulation.

9. Cell - Any container which holds the medication for automatic dispensing.

10. Prescription - An order for medication which is dispensed to or for an ultimate user, but does not include an order for medication which is dispensed for immediate administration to the ultimate user, (e.g., an order to dispense a drug to a bed patient for immediate administration in a hospital is not a prescription.)

11. Automated Data Processing System (ADP) - A system utilizing computer software and hardware for the purposes of recordkeeping.

12. CRT - Cathode Ray Tube used to impose visual information on a screen.

13. Computer - Programmable electronic device, capable of multifunctions including but not limited to storage, retrieval and processing of information.

14. Controlled Substance - Those drug items regulated by Federal (CSA of 1970) and/or State Controlled (dangerous) Substances Act.

15. Downtime - That period of time when a computer is not operable.

16. Prescriber - A practitioner authorized to prescribe and acting within the scope of this authorization.

17. Prescription - A written order from a practitioner authorized to prescribe and acting within the scope of this authorization, (other terminology: prescription order) or a telephone order reduced to writing by the pharmacist.

18. Facsimile (FAX) Prescription - A facsimile prescription is an order which is transmitted by an electronic device over telephone lines which sends an exact copy image to the receiver (pharmacy).

19. Reduced to Writing

a. For new prescriptions this means the preparation of a paper document containing all the information required for a written prescription including the State requirement (Section 2553) for drug product selection;

b. For a refill authorization, it may be handled as a new prescription as in (a) above, or by placing on the original prescription or the patient profile (whichever document is consistently used to document refills) the date, a statement "O.K. for 'x' number of additional refills", or words of similar import, and the pharmacist's initials. In no

instance, shall the refill authorizations exceed the legal limits established by State and Federal laws.

c. If the prescriber authorizing additional refills differs from the Prescriber whose name appears on the signature line of the original prescription, then that authorization is considered a new prescription and must be handled as described in (a).

20. Regulatory Agency - Any Federal or State agency charged with enforcement of pharmacy or drug laws and regulations.

21. Printout - A hard copy produced by computer that is readable without the aid of any special device.

22. Stop Date - A date established by an appropriate authority which indicates when medication will no longer be administered or dispensed in the absence of a specific time period directed by the prescriber.

23. Common Data Base - A file or data base created by ADP that enables authorized users to have common access to this file regardless of physical location.

~~[24. Container — is that which holds the article, designed to hold a quantity of drug product intended for administration as a single dose, multiple dose, or a single finished device intended for use promptly after the container is opened.]~~

B. The practice of dispensing shall include, but not be limited to the following acts which shall be performed only by a pharmacist, or a pharmacy intern or student participating in an approved College of Pharmacy coordinated, practical experience program.

1. Receive oral prescriptions and reduce them immediately to writing.

2. Certification of the prescription order - (This involves authenticating the prescription, confirming proper dosage and instructions, and reviewing for incompatibility, etc.)

3. Record refill dates and initials of the dispensing pharmacist on the prescription (or on another appropriate uniformly maintained readily retrievable record such as the medication records.)

## C. Patient Counseling

1. Before dispensing or delivering a new medication to a patient or his or her agent, a pharmacist or pharmacy intern under the direct supervision of the pharmacist, shall conduct a prospective drug review. A pharmacist or pharmacy intern may conduct a prospective drug review before refilling a prescription to the extent deemed appropriate by the pharmacist or pharmacy intern in his/her professional judgment. Such review shall include screening for potential drug therapy problems due to therapeutic duplication, drug-drug interactions, including serious interactions with over-the-counter drugs, drug-disease contraindications, if disease is known, incorrect drug dosage

or duration of drug treatment, drug-allergy interactions, and clinical abuse or misuse based on available information received by the pharmacist.

2. Except when a prescriber requests that information regarding a prescribed drug not be given to a specific patient, a pharmacist or a pharmacy intern under the direct supervision of a pharmacist shall, with each new medication dispensed, provide counseling to the patient or the patient's agent on pertinent medication information. The counseling may include, but not be limited to the following:

- a. the name and description of the prescribed drug;
- b. the dosage and the dosage form;
- c. the method and route of administration;
- d. the duration of the prescribed drug therapy;
- e. any special directions and precautions for preparation, administration, and use by the patient that the pharmacist determines are necessary;
- f. common severe side effects or adverse effects or interactions and therapeutic contraindications that may be encountered, how to avoid them, and what actions should be taken if they occur;
- g. patient techniques for self-monitoring of the drug therapy;
- h. proper storage;
- i. prescription refill information;
- j. the action to be taken in the event of a missed dose; and
- k. current over-the-counter medication use.

3. This section does not apply to a pharmacist dispensing drugs for inpatient use in a hospital or other institution where the drug is to be administered by a nurse or other appropriate health care provider.

4. Nothing in this section requires a pharmacist or pharmacy intern under the direct supervision of a pharmacist, to provide patient counseling when a patient or the patient's agent refuses the counseling. There must be a record in a uniform place that documents a patient's acceptance or refusal of counseling. The record must indicate who made the offer to counsel.

5. If the dispensed prescription is delivered by an agent of the pharmacy when the pharmacist is not present (i.e. home delivery, pharmacist off duty and non-resident pharmacies) written or printed information shall be included with the prescription. The patient or his/her agent shall be informed that the pharmacist will be available for consultation.

6. The pharmacist shall in his/her professional judgment refill prescriptions in keeping with the number of doses ordered and the directions for use.

7. The pharmacist who dispenses the original prescription shall hand-sign or initial the prescription. Initials mechanically or electronically generated are acceptable in lieu of the above provided that the pharmacist

verifies either on a daily printout or in a bound log book daily that the information on the prescription is correct. The verification must be hand-signed and dated by the pharmacist.

#### D. Supportive personnel

##### 1. Qualifications and training

a) The pharmacist-in-charge is responsible for ensuring proper training of all supportive personnel. The actual training may be delegated to a pharmacist or other trained supportive personnel.

b) The areas of training required are to be determined by the pharmacist-in-charge and will be appropriate to the practice site and responsibilities assigned to the supportive personnel. Areas of training shall include:

- 1) general drug and dosage form knowledge
- 2) medical terminology
- 3) pharmaceutical calculations
- 4) prescription labeling requirements
- 5) general filling/dispensing responsibilities
- 6) patient profile record system requirements
- 7) requirements for patient counseling
- 8) confidentiality
- 9) safety practices
- 10) inventory functions
- 11) knowledge of applicable State and Federal

#### Statutes and Regulations

- 12) other site-specific parameters

c) The general content of the training program must be maintained in the policy and procedure manual.

d) Documentation of successful training in specific areas by oral or written evaluation will be maintained and will be available for inspection by the Board of Pharmacy.

##### 2. Supervision

Supportive personnel must be supervised by a registered pharmacist who will be responsible for the activities of these persons.

##### 3. Activities allowed

a) Supportive personnel will be allowed to perform only those duties permitted by this regulation.

b) Supportive personnel may aid in the dispensing of prescriptions as authorized in Section 2513 under the supervision of a pharmacist by performing the following tasks:

- 1) Obtaining the medication from stock.
- 2) Typing the label after the pharmacist has interpreted the directions.

3) Counting, pouring and selecting prefabricated medications and selecting individual prepackaged unit dose medication provided that these are not in conflict with the state and federal law (Federal Comprehensive Controlled Substances Act) and that **[such selection is properly checked by the pharmacist before**

**the dose is authorized.]** ~~[a final check by the pharmacist is made after the medication is placed in the final container prior to dispensing and administration to the patient.]~~

c) Compounding is the responsibility of the pharmacist or pharmacy intern under the direct supervision of the pharmacist. All compounding must be in compliance with FFDCA Section 503A and any regulations promulgated by FDA concerning compounding pertaining to this section. The pharmacist may utilize the assistance of supportive personnel if the following is performed:

- 1) The formulation is developed by the pharmacist before proceeding with the compounding.
- 2) The compounding ingredients are checked by the pharmacist before proceeding with the compounding.
- 3) Every weight and measurement is checked by the pharmacist before proceeding with the compounding.
- 4) The finished product is checked by the pharmacist before dispensing.
- 5) A log is maintained showing the identity of the person actually compounding the medication and the identity of the pharmacist who has performed each of the checks indicated above for each step of the procedure. If policies and procedures are in place ensuring adequate checks by the pharmacist per regulation, the requirement for a log will be waived.

d) Only supportive personnel or persons being trained as supportive personnel as required by this regulation, may perform the activities defined by this regulation.

#### E. Automatic Dispensing Devices

If any automatic counting device is used by a pharmacy, each cell shall have clearly displayed thereon, the date filled, the name of the drug, the batch number, the manufacturer's name, and the expiration date of the particular batch number. No drug can be added to the cell until the present supply is depleted.

#### F. Authorization for renewal of prescriptions

A prescription written for medication which, pursuant to State and Federal law, may be sold, dispensed, or furnished only upon prescription, shall not be renewed without specific authorization of the prescriber. Refills beyond one year of the date of the original prescription shall not be dispensed without further authorization of the prescriber.

#### G. Mandatory Patient Profile Record System

1. A patient profile record system must be maintained at all pharmacies for persons for whom prescriptions are dispensed. The patient profile system shall be devised so as to entitle the immediate retrieval of information necessary to enable the dispensing pharmacist to identify previously dispensed medication at the time a prescription is presented

for dispensing.

2. The following information shall be recorded by a pharmacist or designee:

- a. The family name and first name of the person for whom the medication is intended (the patient);
- b. The address of the patient and phone number;
- c. The patient's age, or date of birth, and gender;
- d. The original date the medication is dispensed pursuant to the receipt of a physician's prescription;
- e. The number or designation identifying the prescription;
- f. The prescriber's name;
- g. The name, strength, quantity, directions and refill information of the drug dispensed;
- h. The initials of the dispensing pharmacist and the date of dispensing medication as a renewal (refill) if said initials and such date are not recorded on the original prescription;
- i. If the patient refuses to give all or part of the required information, the pharmacist shall so indicate and initial in the appropriate area.
- j. Pharmacist comments relevant to the patient's drug therapy, including any other information peculiar to the specific patient or drug.

3. The pharmacist or pharmacy intern under the direct supervision of a pharmacist shall attempt to ascertain and shall record any allergies and idiosyncrasies of the patient and any chronic disease states and frequently used over-the-counter medication as communicated to the pharmacist by the patient. If the answer is none, this must be indicated on the profile.

4. Upon receipt of a new prescription, a pharmacist or pharmacy intern under the direct supervision of a pharmacist must examine the patient's profile record before dispensing the medication to determine the possibility of a harmful drug interaction or reaction. Upon recognizing a potential harmful reaction or interaction, the pharmacist shall take appropriate action to avoid or minimize the problem which shall, if necessary, include consultation with the physician.

5. A patient profile record must be maintained for a period of not less than one year from the date of the last entry in the profile record unless it is also used as a dispensing record.

#### H. Exchange of Valid Non-Controlled Prescriptions Between Pharmacies

1. Verbal Exchange of Prescriptions - When a pharmacy receives a verbal request for a prescription transfer, it may be honored provided that:

- a. The request comes from a registered pharmacist.
- b. The copy is immediately reduced to writing and contains the information required on a written prescription as listed in Regulation V, and includes the first

and last name of the pharmacist transmitting the information.

c. The prescription used for refills must be clearly identified as a copy.

d. The copy shows the date and the file number of the original prescription and indicates the name and address of the pharmacy providing the copy.

e. The copy shows the last date of dispensing.

f. Only the actual number of refills remaining are indicated.

g. A notation indicating a copy was given and refills are no longer valid must be placed on either the original prescription or patient profile. The document used must be the same one used for the recording of refills per the pharmacy's policy.

2. A copy prepared or transmitted that does not meet the requirements of this Regulation is deemed to be an invalid prescription.

3. Written copies of prescriptions are for information only and are not valid for refilling.

#### I. Automated Data Processing Systems

##### 1. PROFILES

When ADP's are used to maintain patient profile records, all the requirements of Delaware Pharmacy Regulation V must be met.

##### 2. PRESCRIPTION (Drug Order) INFORMATION

Prescription information (drug order) shall include, but not be limited to:

- a. Original dispensing date
- b. Name and address of patient (patient location if in an institution)
- c. Name of prescriber
- d. DEA number of prescriber in the case of a controlled substance
- e. Name, strength, dosage form and quantity, (or Stop Date), and route of administration if other than oral form of drug prescribed
- f. Renewals authorized
- g. Directions of use for patient

##### 3. RECORDS OF DISPENSING

Records of dispensing for original and refill prescriptions are to be made and kept by pharmacies for three years. Information must be immediately accessible for a period of not less than one year from the date of last entry. Information beyond one year but up to three years from the date of last entry may be maintained off-line but must be produced no later than five days upon request from proper authorities. The information shall include, but not be limited to:

- a. Quantity dispensed
- b. Date of dispensing
- c. Serial Number (or equivalent if an institution)
- d. The identification of the pharmacist responsible for dispensing

- e. Record of renewals to date
- f. Name and strength of medicine

#### 4. RECORD RETRIEVAL (DOCUMENTATION OF ACTIVITY)

Any such ADP system must provide via CRT display and or hard copy printout a current history of all authorized prescription activity. This information shall include, but not be limited to:

- a. Serial number of prescription (equivalent if an institution)
- b. Date of processing
- c. Quantity dispensed
- d. The identification of the pharmacist responsible for dispensing
- e. Medication dispensed

#### 5. AUXILIARY RECORDKEEPING SYSTEM

An auxiliary recordkeeping system shall be established for the documentation of renewals if the ADP is inoperative for any reason. The auxiliary system shall insure that all renewals are authorized by the original prescription and that the maximum number of renewals are not exceeded. When the ADP is restored to operation, the information regarding prescriptions dispensed and renewed during the inoperative period shall be entered into the automated data processing system.

#### 6. COMMON DATA BASE

Two or more pharmacies may establish and use a common data file or base to maintain required or pertinent dispensing information. Pharmacies using such a common file are not required to transfer prescriptions or information for dispensing purposes between or among pharmacies participating in the same common prescription file or data base; provided however, any such common file must contain complete and adequate records of such prescription and renewals dispensed. Where common data base is used, this shall not be considered a transfer under Board Regulation V for non-controlled substances.

#### 7. TRANSFER OF PRESCRIPTIONS VIA ADP

A pharmacist may transfer a prescription electronically (ADP) for Schedule III, IV, or V controlled substances to another pharmacy for renewal purposes in accordance with Title 21, Code of Federal Regulations Section 1306.26. A pharmacist may transfer a prescription electronically (ADP) for non-controlled drug for renewal purposes in accordance with current State Regulations.

- a. Any pharmacy using ADP must comply with all applicable State and Federal regulations.
- b. A pharmacy shall make arrangements with the supplier of data processing services or materials to assure that the pharmacy continues to have adequate and complete prescription and dispensing records if the relationship with such supplier terminates for any reason. A pharmacy shall assure continuity in maintenance of records.
- c. The computer record shall reflect the fact that

the prescription order has been transferred, the name of the pharmacy to which it was transferred, the date of transfer, the name of the pharmacist transferring information, and any remaining refill information, if applicable.

d. The pharmacist receiving the transferred prescription drug order shall reduce it to writing with the following information:

- 1. Write the word "TRANSFER" on the face of the transferred prescription.
- 2. Provide all information required to be on the prescription drug order pursuant to State and Federal laws and regulations.

e) To maintain the confidentiality of patient's prescriptions (drug orders) or other pertinent records, there must exist adequate safeguards of security. This shall also pertain to prevent non-user access.

#### ~~8. FACSIMILE TRANSMISSION OF PRESCRIPTIONS~~

~~Electronically transmitted prescription orders by facsimile transmission shall meet the following requirements:~~

~~a. The prescription order shall include, in addition to the State and Federal requirements for non-controlled and controlled prescriptions, the name, fax number, and phone number of the transmitter for verbal confirmation, the time and date of transmission, the number of pages transmitted, the name, phone number, and fax number of the pharmacy intended to receive the transmission, and a confidentiality statement in bold type stating that the fax should not be seen by unauthorized persons. All prescription orders for controlled substances shall be hand signed by the practitioner.~~

~~b. Practitioners or their authorized agents transmitting the prescription must provide voice verification when requested by the pharmacist receiving the prescription order. The receiving pharmacist has the final responsibility of determining validity of the transmission.~~

~~c. If the original prescription is given to the patient, it must be noted on the face of the prescription that the prescription order was faxed, the name of the receiving pharmacy, and the initials of the person who faxed the order.~~

~~d. An electronically transmitted prescription order must be reduced to writing, unless received as a non-fading document, with a notation that the order was received by facsimile.~~

~~e. The receiving facsimile machine must be in the prescription department to protect patient-pharmacist authorized prescriber confidentiality and security.~~

#### 1. ELECTRONIC TRANSMISSION OF PRESCRIPTIONS

1. All Prescription Drug Orders communicated by way of Electronic Transmission shall:

- a. be transmitted directly to a Pharmacist in a



licensed Pharmacy of the patient's choice with no intervening Person having access to the Prescription Drug Order.

b. identify the transmitter's phone number for verbal confirmation, the time and date of transmission, and the identity of the Pharmacy intended to receive the transmission, as well as any other information required by Federal or State law;

c. be transmitted by an authorized Practitioner or his designated agent; and

d. be deemed the original Prescription Drug Order provided it meets the requirements of this subsection.

2. The prescribing Practitioner may authorize his agent to communicate a Prescription Drug Order orally or by way of Electronic Transmission to a Pharmacist in a licensed Pharmacy, provided that the identity of the transmitting agent is included in the order.

3. The Pharmacist shall exercise professional judgment regarding the accuracy, validity, and authenticity of the Prescription Drug Order communicated by way of Electronic Transmission consistent with existing Federal or State laws and rules.

4. All electronic equipment for receipt of Prescription Drug Orders communicated by way of Electronic Transmission shall be maintained so as to ensure against unauthorized access.

5. Persons other than those bound by a confidentiality agreement pursuant to Section 2.A. (2)(k) shall not have access to Pharmacy records containing Confidential Information or personally identifiable information concerning the Pharmacy's patients.

6. Controlled substance prescriptions may only be electronically transmitted via a facsimile.

7. Facsimile prescriptions must meet the following requirements in addition to the above listed electronic Transmission requirements.

a. The prescription order shall include the fax number of the transmitter, the number of transmitted pages, the name, phone number, and electronic number of the pharmacy intended to receive the transmission, and a confidentiality statement in bold type stating the electronic transmission should not be seen by unauthorized persons.

b. Unless the prescription is written for a schedule II controlled substance, the prescriber should not issue the written prescription to the patient.

c. A facsimile transmitted prescription order must be reduced to writing, unless received as a non-fading document, with a notation that the order was received by facsimile.

d. The receiving facsimile machine must be in the prescription department to protect patient-pharmacist-authorized prescriber confidentiality and security.

e. Both non-controlled and controlled substance prescriptions may be transmitted via facsimile following

state and federal requirements. All prescription orders for controlled substances shall be hand-signed by the practitioner.

**J. K. Return of Medications and Supply**

1. Prescriptions and items of personal hygiene shall not be accepted for return or exchange by any pharmacist or pharmacy after such prescription or items of personal hygiene have been taken from the premises where sold, distributed or dispensed.

2. Products under the direct control of a health care professional which are packaged in manufacturer unit dose or tamper-proof unopened bulk containers, tamper proof seal in tact, including unused multi-dose punch cards, may be redispensed in accordance with expiration dating in customized patient medication package. Partially used products may not be redispensed. Nothing in this regulation precludes the Federal laws and regulations.

Effective Date: October 11, 1996

Effective Date: April 14, 1997 Section D revised

Effective Date: June 11, 1998

Amended Effective September 11, 1999

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**DEPARTMENT OF AGRICULTURE**

**THOROUGHBRED RACING COMMISSION**

Statutory Authority: 3 Delaware Code,  
Section 10103 (3 **Del.C.** 10103)

**ORDER**

Pursuant to 29 Del. C. §10118 and 3 Del. C. §10103(c), the Delaware Thoroughbred Racing Commission ("Commission") hereby issues this Order promulgating proposed amendments to the Commission's Rules. Following notice and a public hearing held on May 23, 2000 on the proposed Rules, the Commission makes the following findings and conclusions:

**SUMMARY OF EVIDENCE AND INFORMATION  
SUBMITTED**

1. The Commission posted public notice of the proposed rule revisions in the May 1, 2000 Register of Regulations and in the News-Journal and the Delaware State News. The proposal contained proposed changes to the Commission's existing rules. The Commission scheduled a public hearing for May 23, 2002. At the public hearing, the Commission received no public comments. The Commission also received no written comments during the comment period in May, 2000.

## FINDINGS OF FACT

3. The public was given notice and an opportunity to provide the Commission with comments in writing and by testimony at the public hearing regarding the proposed rule amendments. The Commission received no comments from the public.

4. The Commission proposed changes to thirty rules with the changes designed to clarify the role of the Commission and the racetrack in the current racing operations. The proposed changes are to the following rules: Rule 2.01, Rule 2.02, Rule 2.03, Rule 2.04, Rule 2.05, Rule 2.06, Rule 2.07, Rule 2.08, Rule 2.09, Rule 3.02, Rule 3.03, Rule 4.01, Rule 5.32, Rule 6.01, Rule 6.02, Rule 6.04, Rule 7.01, Rule 7.02, Rule 7.03, Rule 7.06, Rule 8.01, Rule 9.01, Rule 9.03, Rule 9.04, Rule 9.05, Rule 10.03, Rule 10.04, Rule 11.02, and Rule 15.02.

5. The proposed changes are mostly stylistic changes to more accurately designate the roles of the Commission and the licensed racetrack in the licensing and regulation of race participants and in the employment of racing officials. The Commission finds that the proposed rules are necessary changes to the Commission's rules of racing.

## CONCLUSIONS

6. The proposed rules were promulgated by the Commission in accord with its statutory duties and authority as set forth in 3 Del. C. §10103.

7. The Commission deems these rules as proposed to be necessary for the effective enforcement of 3 Del. C. chapter 101 and for the full and efficient performance of the duties thereunder.

8. The Commission concludes that the adoption of the proposed rules is proper and necessary to properly reflect the nature of the current thoroughbred racing operations in Delaware. The Commission therefore adopts the proposed rule amendments as published in the May, 2000 Register of Regulations. These rules replace in their entirety the former version of the Rules of the Delaware State Thoroughbred Racing Commission.

9. The effective date of this Order shall be ten (10) days from the publication of this order in the Registrar of Regulations on July 1, 2000.

IT IS SO ORDERED this 1st day of June, 2000.

Bernard Daney, Chairman

Duncan Patterson, Commissioner

James Decker, Commissioner

Carolyn Wilson, Commissioner

Robert Kerr, Commissioner

**PART 2 -- PERMITS, REGISTRATIONS AND AUTHORIZATIONS****2.01 Conditions precedent to registration or issuance of authorization or permit.**

Thoroughbred racing and participation therein within Delaware are privileges, not rights, which are subject to the conditions and requirements imposed by these Rules. Acceptance of an authorization, registration or permit as provided for by these Rules shall constitute the recipient's consent and agreement to the requirements of these Rules, and failure to comply therewith shall be grounds for immediate voidance or revocation of such authorization, registration or permit. Registrants and Permittees shall abide by all rulings and decisions of the Commission, the Licensee and/or of the Stewards, and all such rulings and decisions shall remain in force unless and until reversed or modified by the Commission upon proper appeal thereto, or a court of competent jurisdiction.

All rulings and decisions of the Stewards may be appealed to the Commission upon deposit of an appropriate sum to defray all costs attendant.

By applying for and/or accepting any authorization, registration or permit provided for by these Rules, the Permittee or Registrant consents: (1) to a search by the Licensee and/or by the Commission, or their respective representatives, of his person and any property in his possession, such property being restricted to that on Licensee's grounds and including, without limiting thereby, tack rooms, living or sleeping quarters, motor vehicles, trunks, boxes and containers of any sort; and (2) to seizure of any object which may be evidence indicating a violation of these Rules; and (3) to having his photograph and fingerprints taken and retained on file by ~~Licensee~~ the Commission and/or any other security or investigative agency or entity it may select. During the conduct of an investigation, every Permittee or Registrant shall respond correctly under oath to the best of his knowledge to all questions asked by the Commission, the Licensee, the Stewards or their respective representatives, pertaining to racing matters.

**2.02 By Whom Required:**

No person shall participate in Thoroughbred Racing in Delaware at any Licensee's racetrack as a horse Owner, Trainer, Assistant Trainer, Authorized Agent, Jockey, Apprentice Jockey, Jockey's Agent, Stable Agent, Stable Employee, Racing Official, Licensee's employee, or employee of a person or concern contracting with the Licensee to provide a service or commodity and which employment requires his presence on Licensee's grounds during a race meeting, or Veterinarian, Farrier, Dental Technician or supplier of food, tack, medication or horse feed, without first securing such authorization or permit therefor from the Commission ~~Licensee~~ in such form, upon such conditions, and for such fees or charges, as it from time to time, with the Commission's approval, may require.

## 2.03 Registrar:

The Licensee is authorized, with the approval of the Commission, to employ a Registrar who shall be responsible for processing applications for authorizations, permits, and registrations of all persons for whom such is required by the preceding section. ~~He also shall be responsible for collecting all requisite fees and charges therefor. All such applications received by the Registrar and granted by him shall be subject to reversal by the Commission for any reason it might deem necessary or appropriate.~~

A person may serve concurrently as Registrar and as a Steward. The Registrar and his assistants shall:

(a) Be present on Licensee's grounds prior to the opening of a race meeting, and during the meeting, to accept such applications and registrations, and shall maintain an office on Licensee's grounds for such purpose.

(b) File reports to the Commission respecting such applications with accountings of fees received therefor, as and when required by the Commission.

(c) Be responsible for arranging the photographing and fingerprinting of all such applicants for whom Licensee requires such.

## 2.04 Standards for Granting Permits, etc., to Participants in Racing:

~~The Commission Licensee, by its Registrar,~~ may allow registration or issue an authorization or permit to any person who applies for same to participate in Thoroughbred Racing at Licensee's racetrack in Delaware as a horse Owner, Trainer, Assistant Trainer, Authorized Agent, Jockey, Apprentice Jockey, Jockey's Agent, Stable Agent, Stable Employee, Racing Official, Licensee's employee, employee of a person or concern contracting with the Licensee to provide a service or commodity and which requires his presence on Licensee's grounds during a race meeting, or Veterinarian, Farrier, Dental Technician, or supplier of food, tack, medication, or horse feed, if the Commission Licensee, ~~by its Registrar,~~ finds that the financial responsibility, age, experience, reputation, competence, and/or fitness of the applicant to perform the activity so registered or permitted by an authorization or permit, are consistent with the best interests of racing and maintenance of the honesty, integrity, and high quality it heretofore has enjoyed in Delaware.

## 2.05 Grounds for Refusal, Suspension, or Revocation of a Permit, etc.:

The Commission Licensee in its discretion, ~~by its Registrar,~~ may refuse to register or to issue an authorization or permit to an applicant, or may suspend or revoke a registration, permit, or authorization previously issued, or order disciplinary measures, on the following grounds:

(a) Denial of a license, permit, authorization or registration to an applicant, or suspension or revocation of such, in another racing jurisdiction at any previous time;

(b) Conviction of a crime or violation of any narcotic regulation, or association with any person who has been so convicted;

(c) Falsification, misrepresentation, or omission of required information in the application submitted to the Commission Licensee; failure to disclose to the Licensee complete ownership or beneficial interest in a horse entered to be raced; misrepresentation or attempted misrepresentation in connection with the sale of a horse or other matter pertaining to racing or registration of Thoroughbreds or Arabians;

(d) Failure to comply with any order or ruling of the Commission, ~~the Licensee~~, Stewards, or Racing Official pertaining to a racing matter;

(e) Ownership of any interest in, or participating by any manner in, any bookmaking, pool-selling, touting, bet solicitation, or illegal enterprise, or association with any person ever so engaged in such activity;

(f) Person less than 16 years of age;

(g) Person unqualified by experience or competence to perform the activity or hold the status for which registration, permit, or authorization is sought;

(h) Intoxication, use of profanity, fighting, or any conduct of a disorderly nature, on Licensee's grounds;

(i) Employment or harboring of unauthorized persons required by these Rules to register or have a permit or authorization;

(j) Discontinuance of or ineligibility for activity for which registration, permit, or authorization was issued;

(k) Possession on Licensee's grounds, without written permission therefor from the Commission, the Licensee, or the Stewards, of:

(1) Firearms;

(2) Battery, or buzzer, or electrical device, or other appliance other than an ordinary whip which could be used to alter the speed of a horse in a race or workout;

(l) Possession on Licensee's grounds by a person other than a licensed Veterinarian of:

(1) Hypodermic needle, or hypodermic syringe, or other device which could be used to administer any substance to a horse;

(2) Narcotics, or medication, or drug, or substance which could be used to alter the speed of a horse in a race.

(m) Use of profane, abusive or insulting language to or interference with a Commissioner, member of the Commission staff, or Racing Official, while such persons are in the discharge of their duties;

(n) Cruelty to a horse or neglect of a horse entrusted to a permittee's care;

(o) Offering, promising, giving, accepting or soliciting a bribe in any form, directly or indirectly, to or by a person having any connection with the outcome of a race, or failure to report knowledge of same immediately to the Stewards;

(p) Causing, or attempting to cause, or participation in

any way in any attempt to cause the pre-arrangement of a race result, or failure to report knowledge of same immediately to the Stewards;

(q) Entering, or aiding or abetting the entering of, a horse ineligible or unqualified for the race entered;

(r) Drug addiction, public drunkenness, financial irresponsibility or failure to pay debts when due, bad moral character, intemperate habits, bad reputation for honesty, truth and veracity, past instance of lying, cheating, or stealing, or involvement in a subject of public notice as involved in any activity which, ~~in the opinion of the Licensee~~, would be inconsistent with the best interests of racing by reflection on the honesty and integrity of the sport of racing, or association with persons so characterized;

(s) Violation of any rule of the Commission, or aiding or abetting any person in the violation of any such rule;

(t) Unfavorable report, on any of the grounds hereinbefore stated, by recognized law enforcement authorities, the Licensee's security director or his designee, inspection bureaus, credit reporting companies, courts or like organizations upon whom the Commission ~~Licensee~~ is authorized to rely if it chooses in any given cause to do so;

**Rule 2.05(t) adopted 7/2/96**

(u) Past or contemplated conduct or utterance which, ~~in Licensee's or its Registrar's judgment or opinion~~, does or may adversely affect, whether intentionally or unintentionally, and whether in fact or only seemingly, the public's confidence in the reputation Thoroughbred racing heretofore has enjoyed in Delaware for stringent adherence to uncompromising standards of honesty, integrity and propriety;

(v) Failure to submit to having his photograph and fingerprints taken and maintained by the Commission or the Licensee.

**2.06 Permit Application for Participants in Racing:**

Any person required to register or have an authorization or permit by Rule 2.02 who desires to participate in Thoroughbred Racing and/or Arabian Racing in Delaware may apply to the Commission ~~Licensee~~ for registration, authorization or permit to participate in racing at Licensee's racetrack. Such application shall be made in writing on application forms prescribed by the ~~Licensee and approved by the Commission~~ and filed at the Licensee's general office or with the Licensee's Registrar on or after January 2 of the calendar year in which the registration, permit, or authorization is to be in force, but not later than 24 hours after applicant has arrived on Licensee's grounds.

All owners and trainers shall carry workmen's compensation insurance covering all their employees. This paragraph is intended to include all individuals employed by Owners and Trainers in the training and racing of horses. All concessionaires shall carry workmen's compensation covering all their employees.

(a) Applications from persons not previously registered or granted an authorization or permit at Licensee's racetrack shall include the names of two reputable persons who will attest to the good reputation of the applicant and to the capability and general fitness of the applicant to perform the activity permitted by the permit.

(b) Applications from persons whose age is not readily ascertainable by the Licensee or its Registrar shall be accompanied by an attested copy of birth certificate or work permit showing applicant is 16 years of age or older.

(c) Fingerprint identification, as well as a photograph, will be required of all registrants and permittees unless waived ~~by the Licensee~~ (e.g., absentee owners and casual delivery personnel who do not enter the stable area).

(d) Applications from persons, corporations, partnerships, lessees, or other legal entities involving more than one individual person desiring to race horses at Licensee's racetrack in Delaware shall, in addition to designating the person or persons to represent the entire ownership of such horses, be accompanied by documents which fully disclose the identity and degree and type of ownership held by all individual persons who own or control, directly or indirectly, as a stockholder, syndicate participant, partner, or otherwise, a present or reversionary interest in such horses. No application shall be acted upon ~~by the Licensee~~ until it is satisfied a full disclosure has been made.

(e) Applications from persons desiring to treat, or prescribe for, or attend any horse on Licensee's grounds as a practicing Veterinarian, shall be accompanied by evidence that such person is currently licensed as a Veterinarian by the State of Delaware. An accredited practicing Veterinarian not holding a permit or authorization from the Licensee or a license from the State of Delaware, however, may with permission of the Stewards in an emergency be called in as a consultant, or to serve as a Veterinarian for one horse on a temporary basis, and shall not thereby be considered as participating in racing in this State.

(f) Applications from persons desiring to treat, or prescribe for, or attend any horse on Licensee's grounds as a Dental Technician shall be accompanied by the name of a licensed Veterinarian who will attest to the technical competence of such applicant and under whose sponsorship and direction such applicant will work on Licensee's grounds.

(g) As a condition precedent to the registration or issuance of any permit or authorization required of participants in racing by these Rules, the Commission ~~Licensee or its Registrar on its behalf~~ shall be entitled to charge and collect, and each applicant shall be required to pay, an annual fee in such amount as permitted by 3 Del. C. chapter 101 ~~as from time to time shall be approved by the Commission~~ for each activity or status for which applicant seeks registration or the issuance of a permit or

authorization.

All fees so collected by the Licensee or its Registrar on its behalf may be retained by Licensee, as its own funds, to defray its costs and expenses in processing and administering the registrations, permits and authorizations required by these Rules for the purpose of protecting and maintaining the integrity and good reputation of Thoroughbred Racing conducted in Delaware.

The Commission, pursuant to 3 Del.C. §10131, shall have the power to impose license fees for those participating in a racing meet. The license fees for participants in a racing meet, if imposed by the Commission, shall be payable to the Commission as follows:

- (1) \$50 for all owners and all trainers.
- (2) \$30 for all veterinarians, farriers, jockeys, apprentice jockeys, jockey agents, and assistant trainers.
- (3) \$15 for all licensee vendors and vendor employees.
- (4) \$5 for all stable employees and association employees.

Activities for which such fees may be charged and collected may include the following categories:

1. Owner registration, Stable Name, Partnerships, and annual color registration;
2. Trainer, Assistant Trainer, Authorized Agent, Jockey, Apprentice Jockey, or Jockey's agent registration or authorization;
3. Veterinarian, Dental Technician, Assistant Trainer, Farrier, or Apprentice Farrier authorization;
4. Stable Agent, Stable Employee authorization (foreman, exercise boy, groom, hotwalker, watchman or pony boy);
5. Stable area Supplier authorization (suppliers of horse feed, tack, medications or food vendors);
6. Racing Department Employee authorization, Steward, Racing Secretary, Assistant Racing Secretary, Director of Racing, Starter and Assistant Starter, Paddock Judge, Patrol Judge, Placing Judge, Timer, Veterinarian, Chemist, Security Personnel, testing laboratory employee, Horse Identifier, Valet, jockey room Custodian, Clerk of Scales, Entry Clerk, photo finish operator, film patrol or video tape operator and projectionist, Flagman or Outrider;
7. Mutuel Department employee authorization, manager, calculator, sheet writer, supervisor, ticket checker, ticket seller, ticket cashier, messenger, runner, outbook clerk, program clerk, porter, information and change clerk, boardman, ticket room and money room clerk, assistant, totalizer employee;
8. Occupational authorization, Admission Department Manager and employees; concessions manager and employees; parking manager and employees; Security Department including police chief, detectives, policemen, watchmen, firemen, ambulance drivers and attendants; track superintendent, groundsman, mechanics, carpenters;

Maintenance Department Manager and employees; all other persons employed by the Licensee or employed by a person or concern contracting with the Licensee to provide a service or commodity and which employment requires their presence on Licensee's grounds during a race meeting;

9. Temporary occupational authorization for persons to be employed for ten days or less during a calendar year.

Rule 2.06 revised 7/2/96.

## 2.07 Registrar:

The Commission ~~Licensee or its Registrar~~ shall review all registrations, authorizations and permits subject to such security check and other investigation in appropriate instances as it may deem necessary or desirable, and may issue to a permit applicant a temporary authorization or permit to participate in the activity for which application is made pending further processing, investigation, and final action on such application subsequently.

## 2.08 Term of Authorization:

Registrations, authorizations and permits issued by the Commission ~~Licensee or its Registrar~~ hereunder for participants in Thoroughbred Racing at its racetrack shall be valid from the date of issuance through the calendar year shown on such license at all race meetings conducted by said Licensee during such calendar year, unless sooner suspended, revoked or voided, or otherwise permitted by 3 Del.C. chap. 101. The Commission ~~Licensee or its registrar~~ may renew any authorization or permit and any such renewal shall not be construed to be a waiver or condonement of any violation which occurred prior to such renewal and shall not prevent subsequent proceedings against the holder thereof.

The validity of a registration, permit or authorization does not preclude or infringe upon the common law and absolute right of any Licensee in Delaware, without necessity for giving reason or excuse, to eject or exclude any person from its premises at any time.

## 2.09 Possession of identification card required:

No person required by these Rules to be registered by, or to have an authorization or permit from the Commission ~~Licensee~~, may participate in any activity for which such is required on Licensee's grounds during a race meeting without having been issued an identification card containing his or her photograph which shall evidence such authorization and having the same in his or her possession.

With respect to Owners, or in special cases with respect to others, Licensee may waive this requirement. Also, see Rule 6.01.

## PART 3 -- STEWARDS

### 3.02 Appointment of Stewards:

There shall be three Stewards at each race meeting, each of whom shall be appointed by ~~the Licensee, subject to the approval of the Commission. Names of the Licensee's appointments for Stewards shall be submitted for approval to the Commission as early as possible, but not later than 30 days before commencement of Licensee's race meeting except for good cause.~~ If required by the Commission, biographical data setting out the experience and qualifications of the nominees shall be provided to the Commission by the Licensee. ~~The Licensee shall submit successive nominees until three persons are approved by the Commission as qualified to serve as Stewards.~~ No Steward shall serve until approved by the Commission.

(a) Stewards shall serve from one minute after midnight on the day before the first racing day until one minute before midnight on the day after the last racing day of the race meeting for which they are appointed; provided, in the event a dispute or controversy arises during a race meeting which is not settled at the conclusion of the race meeting, then the power of the Stewards shall be extended over the period necessary to resolve the matter, or until the matter is referred or appealed to the Commission;

(b) ~~With the approval of the Commission,~~ Stewards may be replaced by the Commission ~~Licensee~~ at any time for failure to perform their duties properly and diligently;

(c) In the event that during a racing meet a Steward becomes ill, resigns, or is unable to serve for any reason, then the remaining Stewards, after obtaining approval of the Commission ~~Licensee~~, shall nominate a successor or temporary Steward to the Commission for approval. In emergencies, a single Commissioner by telephone may approve appointment of a successor Steward.

### 3.03 General Powers of the Stewards

The Stewards shall exercise immediate supervision, control and regulation of racing at the race meeting for which they are appointed. By way of illustration and without in any way limiting them, the powers of the Stewards shall include:

(a) Authority over all horses and all persons (except members of the Commission and its representatives, and except Licensee's management personnel and staff) on Licensee's grounds during a race meeting as to all matters relating to racing;

(b) To determine all questions, disputes, protests, complaints, or objections concerning racing (as distinguished from Licensee's business operations and affairs) which arise during a race meeting, and to enforce such determinations. All three Stewards shall be on Licensee's grounds before post time for the first race until conclusion of the last race. Except for good cause, all three Stewards shall be present in the Stewards' stand during the running of each race;

(c) It is preferred but not required that at least one

Steward, or a designated representative of the Stewards, be present in the paddock at least 20 minutes before each race and remain there until the horses leave for the starting gate, to observe the conduct of all persons in and around the paddock and to inspect, with the Paddock Judge and Commission's ~~Licensee's~~ Veterinarian, all horses for fitness;

(d) When requested by the Commission ~~Licensee or its Registrar~~, to review all applications for registrations or permits to participate in racing, and, if requested ~~by Licensee~~ or by the Commission, to administer, or cause to be administered by technically qualified persons, standard examinations to all first-time applicants to be registered as or receive a permit to be a Trainer, Jockey, Apprentice Jockey, Veterinarian, Dental Technician, or Farrier, and, when requested, make recommendations ~~to the Licensee~~ as to the qualifications of all applicants for registrations or permits to participate in racing;

(e) When requested by the Commission ~~Licensee or its Registrar~~, to review all licenses, registration certificates, and all contracts, papers, and other documents pertaining to the sale or ownership of a horse, payment of purse money, Jockey and Apprentice Jockey contracts, appointments of agents, adoptions of racing colors or stable name, and advise upon the eligibility and appropriateness thereof for participation in racing in Delaware;

(f) To call for proof of eligibility of a horse or person to participate in a race if such is in question, and in the absence of sufficient proof to establish eligibility, the Stewards may rule such horse or person ineligible;

(g) To review stall applications and advise Licensee of undesirable persons, if any, among Owners and Trainers applying for stalls, and provide the Licensee with information pertaining to such undesirable persons;

(h) To supervise the taking of entries and receive all declarations and scratches, and determine all questions arising and pertaining to same. The Stewards may in their discretion refuse the entry of any horse by any person or refuse to permit a declaration or scratch, or may limit entries in any way. Upon suspicion of fraud or misconduct, the Stewards may excuse a horse or replace any Jockey or Trainer, or Racing Official other than a Steward;

(i) All other powers enumerated in these Rules, together with such other powers as are necessary to promote and maintain stringent standards for honesty, integrity, and propriety for Thoroughbred Racing in Delaware.

## PART 4 -- RACING OFFICIALS

### 4.01 Racing Officials

The Commission may appoint such officers, clerks, stenographers, inspectors, racing officials, veterinarians, and such other employees as it deems necessary, consistent with the purposes of this chapter. The Commission, for the purpose of maintaining the integrity and honesty in racing,

shall prescribe by administrative regulation the powers and duties of the persons employed under this section and qualifications necessary to perform those duties.

Persons appointed by the Licensee to serve as Racing Officials during a race meeting must first be approved by the Commission, shall serve only so long as approved by the Commission, and shall be under the supervision of the Stewards. For purposes of these Rules, Racing Officials shall include those persons serving as Steward, Racing Secretary, Assistant Racing Secretary, Clerk of the Scales, Paddock Judge, Starter, Patrol Judge, Placing Judge, Timer, Identifier and Veterinarian.

(a) No person while serving as a Racing Official shall, directly or indirectly, own a beneficial interest in a Thoroughbred, or Jockey contract, or Licensee under his supervision; nor shall he cause to be sold, for himself or another, any Thoroughbred under his supervision; nor shall he wager on any race under his supervision; nor shall he write or solicit horse insurance or have any monetary interest in any business which seeks the patronage of horsemen or racing associates as such. For the purposes of the above, the following employees shall also be deemed Racing Officials: Assistant Starter, Jockey Room Custodian, Jockey Room Employees, Valets, Outriders.

No person shall be appointed to or hold any such office or position who holds any official relation to any person, association, or corporation engaged in or conducting thoroughbred racing within this state. No Commissioner, racing official, steward, or judge whose duty it is to insure that the rules and regulations of the Commission are complied with shall bet on the outcome of any race regulated by the Commission. All persons appointed under 3 Del. C. §10107(a-c) shall serve at the pleasure of the Commission and are to be paid a reasonable compensation.

(b) Racing Officials serving in the capacity of Stewards, Placing and/or Patrol Judges, Clerk of Scales, Starter and Horse Identifier shall have good vision and an ability to distinguish colors correctly.

(c) Any Racing Official who desires to leave his employment during the race meeting must first obtain permission from the Commission; in the event a vacancy occurs among Racing Officials other than Stewards, the Licensee shall promptly appoint a successor, subject to approval of the Commission; in the event the Licensee does not appoint a successor in time to permit the orderly conduct of racing, then the Stewards shall immediately appoint a temporary successor.

## PART 5 -- LICENSEES

### 5.32 Commission's Licensee's Veterinarian:

The Commission will ~~Each Licensee shall~~ employ a graduate Veterinarian, licensed in Delaware, experienced in equine medicine and practice who, aided by such Assistant

Veterinarians possessing like qualifications ~~as Licensee may employ~~, shall be responsible for inspecting all horses entered and advising upon their racing soundness. Such Veterinarian also shall maintain and post in the Racing Secretary's office a Veterinarian's list of horses ineligible to race because of sickness or unsoundness. Additionally, he shall supervise the following: control of communicable equine diseases; insect control; sanitary conditions in the stable area; and cruel and inhumane treatment of horses, etc.

(a) The Commission's Licensee's Veterinarian shall be attendant on the Stewards and the Racing Secretary at scratch time each day, shall examine such horses as such Racing Officials may request, and shall make reports to such Racing Officials as promptly as possible;

(b) The Commission's Licensee's Veterinarian also shall be responsible for inspecting every horse entered on the day of the race for which such horse is entered. Such inspection shall be for physical fitness, general condition and for any noticeable unsoundness or peculiarities that may affect the racing condition of the horse, or be considered for the scratch of a horse on a muddy or sloppy track. Such pre-race examinations shall be recorded on a Health Record for every starter at the race meeting.

(c) The Commission's Licensee's Veterinarian shall be present in the paddock for saddling, shall accompany each field to the starting post, and shall observe all horses after the finish of each race. If, in his opinion, a horse suffers an injury while in the paddock, during the post parade, or at the starting gate, which shall render such horse unfit to race, he shall recommend to the Stewards that the horse be excused and placed on the Veterinarian's List. All horses requested to be scratched for physical reasons after scratch time shall be inspected by the Commission's Licensee's Veterinarian who shall report the condition of such horses to the Stewards.

(d) No Commission's Licensee's Veterinarian during his employment ~~by a Licensee~~ shall be permitted to engage in private veterinary practice involving Thoroughbreds, nor be employed by or receive any compensation directly or indirectly from any licensed Owner or Trainer, nor sell or buy, for himself or another, any Thoroughbred, nor place any wager in any manner on any race run at Licensee's premises, nor sell any drug supplies, nor sell horse insurance, nor be licensed to participate in racing in any other capacity.

## PART 6 -- OWNERS

### 6.01 **Registration Required:**

No horse may be entered or raced in Delaware unless the Owner or each of the part Owners has been granted a current Owner's registration by the Commission Licensee or its Registrar, except that for good cause shown, a temporary registration may be issued which will be valid for entering

and racing pending administrative processing and final action by the ~~Commission Licensee or its Registrar~~ on such Owner's registration application, but in no event shall such temporary registration be considered valid longer than two weeks subsequent to the date such registration application was submitted.

#### 6.02 Requirements for Owner's Registration:

In addition to satisfying the requirements applicable to Permittee, et al., imposed by Part 2 of these Rules, in order to be eligible for registration as an Owner, a person also:

- (a) Must be an individual 18 years of age or older.
- (b) All Owners and Trainers shall carry workmen's compensation insurance covering all their employees. This paragraph is intended to include all individuals employed by Owners and Trainers in the training and racing of horses.
- (c) Must own or have under lease a horse eligible to race and be prepared to prove such upon call of the Stewards.
- (d) Must not engage in any activity directly or indirectly involving the racing performance of horses on Licensee's grounds owned and trained by others.

1. ~~The Commission or its designee, Licensee, or its Registrar~~, may deny, suspend or revoke an Owner's registration for the spouse, or any member of the immediate family or household, of a person ineligible to be registered as an Owner, unless there is a showing by the applicant or registered Owner, and the ~~Commission Licensee or its Registrar~~ so finds, that his participation in racing as an Owner will in no way circumvent the intent of this Rule by permitting a person, under the control or direction of a person ineligible for an Owner's registration, to serve in effect as the alter ego of such ineligible person.

2. A registered Owner or Trainer may personally serve as a Farrier or Jockey for horses he owns or are registered in his care, provided he has received from the Stewards a certification of his fitness as a competent Farrier or Jockey.

#### 6.04 Joint Ownership:

No more than four individual persons may be registered as Owners of a single horse.

(a) In the event more than four individual persons own interests in a single horse, through a partnership, corporation, syndication or other joint venture, then such individual persons may designate in writing a member of the partnership, corporation, syndicate or joint venture to represent the entire ownership of and be responsible for such horse as the registered Owner thereof.

(b) Such agreement or lease shall accompany the application for an Owner's registration. Each person designated as representing the entire ownership of a horse must be registered.

(c) ~~The Commission Licensee or its Registrar~~ may

deny, suspend or revoke the registration of any Owner whose ownership of a horse is qualified or limited in part by rights or interests in or to such horse held or controlled by any other individual person or persons ineligible to be registered as an Owner thereof.

### PART 7 -- TRAINERS

#### 7.01 Registration Required:

No horse may be raced in this State unless the Trainer thereof has been granted a current Trainer's registration by ~~the Commission Licensee or its Registrar~~.

#### 7.02 Requirements for Trainer's Registration:

In addition to satisfying the requirements applicable to Permittees, et al., imposed by Part 2 of these Rules, in order to be eligible for registration as a Trainer, a person:

- (a) Must be an individual 18 years or older; no Trainer may be licensed to train under an assumed or stable name;
- (b) Must be qualified by experience or competence to care for and train race horses;
- (c) Must have in his charge a horse eligible to race;
- (d) Must not engage in any activity directly or indirectly involving the racing performance of horses on Licensee's grounds other than those registered as being in his charge.

1. A registered Trainer may not concurrently participate in racing in this State as a Jockey, Apprentice Jockey, Jockey's Agent, Veterinarian, Assistant Veterinarian, Dental Technician, Farrier, Apprentice Farrier, or as an employee in Licensee's racing department, except as provided by Rule 8.03.

2. ~~The Commission Licensee or its Registrar~~ may deny, suspend or revoke a Trainer's registration for the spouse or any member of the immediate family or household of a person ineligible to hold a Trainer's license under these Rules, unless there is a showing by the applicant or registered Trainer, and ~~the Commission Licensee or its Registrar~~ so finds, that his participation in racing as a Trainer will in no way circumvent the intent of these Rules by permitting a person, under the control or direction of a person ineligible to hold a Trainer's license, to serve in effect as the alter ego of such ineligible person.

#### 7.03 Duties and Responsibilities:

A registered Trainer shall bear primary responsibility for the proper care, health, training, condition, safety and protection against administration of prohibited drugs or medication of horses in his charge. A registered trainer:

(a) Shall register with the Racing Secretary all persons in his employ and insure that they duly apply for permits within 24 hours after they arrive on Licensee's grounds or are employed. Upon discharge of an employee, a Trainer must promptly notify the Racing Secretary and the Licensee or its



Registrar.

(b) All Owners and Trainers shall carry workmen's compensation insurance covering all their employees. This paragraph is intended to include all individuals employed by Owners and Trainers in the training and racing of horses.

(c) Shall register with the Racing Secretary all horses in his charge in the manner required by Rule 6.03. No registered Trainer may take or keep in his charge a horse owned wholly or in part, or controlled by, a person who is not registered as an Owner. No registered Trainer shall assume responsibility for horses not under his active care and supervision, except as provided by Rule 7.03(f).

(d) Shall bear the absolute responsibility to report bleeders from other jurisdictions to the Commission's ~~Licensee's~~ Veterinarian or Stewards, on official forms from that state, prior to entry.

(e) Shall bear primary responsibility for horses he enters as to eligibility, weight allowances claimed, physical fitness to perform creditably at the distance entered, absence of prohibited drugs or medications, proper shoes, bandages and equipment, and timely arrival in the saddling paddock. A registered Trainer shall be jointly responsible with the registered Owner for horses he enters as to stakes payments and jockey fees due.

(f) When entering horses, Trainers shall furnish, as first call, the name of the Jockey engaged to ride each horse entered and, as second call, the name of an alternate Jockey to ride each horse entered, if possible at the time of entry, but in no event later than scratch time unless part of an entry. If no first or second call Jockey has been named to ride a horse entered to race by scratch time, then the Stewards shall select a rider to ride such horse.

(g) Shall personally attend his horses in the paddock and supervise the saddling thereof, unless excused by the Stewards. If a registered Trainer is to be absent from Licensee's grounds where his horses are stabled, he must provide a substitute -- his registered Assistant Trainer or another registered Trainer -- to attend the saddling of horses already entered and to assume complete responsibility for horses to be entered. Such substitute must be approved by the Stewards and shall sign in the presence of the Stewards a form furnished by Licensee accepting complete responsibility for horses he so enters.

(h) May attend the taking and testing of a saliva, urine or blood sample from a horse in his charge by the Commission's ~~Licensee's~~ Veterinarian and/or Chemist, or may delegate one of his employees holding an authorization or permit to do so.

(i) Shall maintain the stable area assigned to him in a clean, neat and sanitary condition at all times and insure that fire prevention rules are strictly observed in his stable area.

(j) Shall promptly report to the Commission's ~~Licensee's~~ Veterinarian any sickness or death of any horse in his charge.

## 7.06 Assistant Trainer:

A registered Owner or registered Trainer may employ an Assistant Trainer. Such Assistant Trainer must obtain an authorization from the Commission ~~Licensee or its Registrar~~ before acting in such capacity on behalf of his employer. Qualifications for obtaining an Assistant Trainer's authorization shall be prescribed by the Stewards. An authorized Assistant Trainer shall assume the same duties and responsibilities as imposed on a registered Trainer. The registered Trainer shall be jointly responsible with his Assistant Trainer for all acts and omissions of such Assistant Trainer involving a racing matter.

## PART 8 -- JOCKEYS AND APPRENTICE JOCKEYS

### 8.01 Probationary Mounts:

Any person desiring to participate at Licensee's premises as a rider and who never previously has ridden in a race may be permitted to ride in two races before applying for a permit as a Jockey or Apprentice Jockey, provided, however:

(a) Such person has had at least one year of service with a racing stable and currently holds a permit issued by the Commission ~~Licensee or its Registrar~~ for a recognized activity in racing;

(b) A registered Trainer certifies in writing to the Stewards that such person has demonstrated sufficient horsemanship to be permitted such probationary mounts;

(c) The Starter has schooled such person in breaking from the starting gate with other horses and approves such person as being capable of starting a horse properly from the starting gate in a race;

(d) The Stewards, in their sole discretion, are satisfied that such person intends to become a licensed Jockey, possesses the physical ability and has demonstrated sufficient horsemanship to ride in a race without jeopardizing the safety of horses or other riders in such race. No such person shall be permitted to ride in any such probationary race without the prior approval of the Stewards.

## PART 9 -- AGENTS, AUTHORIZED AND JOCKEY

### 9.01 Agency Permitted:

Any registered Owner or Jockey or Apprentice Jockey holding a permit issued by the Commission ~~Licensee or its Registrar~~ may, as a principal, authorize another person as an agent to act in such principal's behalf in all matters pertaining to racing and transfer of horses at Licensee's premises. Such authorization shall be in writing and shall define the powers, limits and terms of such agency.

### 9.03 Termination of Agency:

Such Agency shall remain in effect until written

notification of revocation is received from the principal by ~~the Commission Licensee or its Registrar~~. In the event a Jockey Agent is dismissed by his employer, or if a Jockey Agent discontinues making engagements for a rider, then such Jockey Agent shall immediately notify the Stewards and turn over to the Clerk of Scales a list of any unfulfilled engagements such Jockey Agent may have made for such rider.

#### 9.04 Acts by Authorized Agent:

Unless precluded by specific limitations in the agency appointment, an Authorized Agent who is registered or who holds a permit granted by ~~the Commission Licensee or its Registrar~~ may perform at Licensee's premises on behalf of the registered owner-principal all acts pertaining to racing, including the transfer of ownership of horses, as could be performed by the principal were he present. In executing any document on behalf of the principal, an Authorized Agent shall clearly indicate that he is acting as an Authorized Agent and shall specify the principal for whom he is acting. When an Authorized Agent enters a claim for the account of his principal, the name of the registered Owner for whom the claim is being made and the name of the Authorized Agent shall appear on the claim slip.

#### 9.05 Riding Engagements:

No person other than the contract employer or licensed Jockey Agent who holds a permit issued by ~~the Commission Licensee or its Registrar~~ may make riding engagements for a rider, except that a Jockey not represented by an Agent may make his own riding engagements. Such persons permitted to make riding engagements shall maintain in their possession at all times an engagement book and shall record therein riding engagements made, the same being subject to examination by the Stewards at any time. No Jockey Agent may enter the Jockey room, paddock or racing strip during the hours of racing.

### PART 10 -- HORSES

#### 10.03 Denerving:

Any horse on which a neurectomy has been performed shall have such fact designated on its registration certificate or racing permit. It shall be the joint responsibility of the practicing veterinarian who performed the operation and the Trainer of such denerved horse to insure that such fact is designated on the registration certificate or racing permit.

(a) Any horse whose ulnar, radial or median nerve has been either blocked or removed (known as high nerved), or whose volar or plantar nerve has been blocked or removed, unilaterally or bilaterally, shall not be entered or raced in this State.

(b) Any horse which has had a posterior digital neurectomy (known as low nerved) may be permitted to race

provided such denerving has been reported by the Trainer to the Stewards and such horse has been approved for racing by ~~the Commission's Licensee's~~ Veterinarian prior to being entered for a race.

(c) In the event a horse races in violation of this Rule and participates in the purse distribution, then no protest thereon will be considered unless submitted in writing to the Stewards within 48 hours after such race.

(d) In the event a horse races in violation of this Rule and is claimed, then no protest thereon will be considered unless the successful claimant submits such protest in writing within 48 hours requesting that his claim be voided. Should the claim be voided, the horse shall be returned to the Owner who started such horse in such race and the claim price shall be returned to the claimant.

(e) A list of all denerved horses shall be posted in the Racing Secretary's Office. No person shall report a horse as having a neurectomy when in fact such horse has not.

#### 10.04 Bleeders:

Any horse known to have bled from its nostrils during a race or workout may not be entered or raced without the prior approval for racing by ~~the Commission's Licensee's~~ Veterinarian. A horse which bled for the first time shall not be permitted to run for a period of ten (10) calendar days. A horse which bleeds a second time shall not be permitted to run for thirty (30) calendar days. A horse which bleeds a third time shall not be permitted to run for ninety (90) days. A horse which bleeds a fourth time shall be barred from further racing in the State of Delaware, except that if a horse's fourth bleeding incident occurs within one year of the first bleeding incident, then the horse shall not be barred but shall not be permitted to run for one year. If a horse has bled three times but at least twelve months have passed since the last bleeding incident, then if the horse bleeds for a fourth time, the horse shall not be permitted to run for twelve (12) months, and any further bleeding incidents will prevent the horse from racing for another twelve (12) month period. (A positive endoscopic examination shall be classed as a first time bleeder). See Rule 15.02 Bleeder Medication.

#### 10.07 Removal from Licensee's Grounds:

No dead or sick horse may be removed from Licensee's grounds without the prior approval of the ~~Commission's Licensee's~~ Veterinarian.

### PART 11 -- ENTRIES, SUBSCRIPTIONS, DECLARATIONS

#### 11.02 Procedure for Making Entries:

It shall be the absolute responsibility of the Trainer to report bleeders from other jurisdictions to the ~~Commission's Licensee's~~ Veterinarian or Stewards on official forms from that State prior to entry.

All entries, subscriptions, declarations and scratches

shall be lodged with the Racing Secretary and shall not be considered as having been made until received by the Racing Secretary who shall maintain a record of time of receipt of same.

(a) Every entry must be in the name of such horse's registered Owner, as completely disclosed and registered with the Racing Secretary under these Rules and made by the Owner, Trainer or a person deputized by such Owner or Trainer.

(b) Every entry must be in writing, or by telegraph promptly confirmed in writing, except that an entry may be made by telephone to the Racing Secretary but must be confirmed in writing should the Stewards, the Racing Secretary or an assistant to the Racing Secretary so request.

(c) Every entry shall clearly designate the horse so entered. When entered for the first time during a meeting, every horse shall be designated by name, age color, sex, sire, dam and broodmare sire, as reflected by such horse's registration certificate.

1. No horse may race unless correctly identified to the satisfaction of the Stewards as being the horse duly entered;

2. In establishing the identity of a horse, responsibility shall be borne by any person attempting to identify such horse as well as the Owner of such horse, all such persons being subject to appropriate disciplinary action for incorrect identification.

(d) At the time of entering a horse, the Trainer of such horse or his representative, must declare to the Racing Secretary or his representative, whether the horse will race on any medication permitted by these Rules and shall not deviate from such declaration.

Within the discretion of the Stewards, a list of horses so declared to race on medication may, in whole or in part, be announced, released for publication or otherwise made public without liability for the accuracy thereof.

(e) In order to claim an apprentice allowance at the time of entry, an Apprentice Jockey must be designated by name.

(f) No alteration may be made in any entry after the closing of entries, except that an error may be corrected.

(g) No horse may be entered in two races to be run on the same day.

## PART 15 -- MEDICATION, TESTING PROCEDURES

### 15.02 Bleeder Medication:

Notwithstanding anything in the Rules of Racing to the contrary, the Stewards may permit the administration of Furosemide (Lasix) to control epistaxis (bleeding) to horses under the following conditions:

(a) A horse which, during a race or workout at a duly licensed race track in this State or within the first hour immediately following such a race or workout, is observed

by the Commission's ~~Licensee's~~ Veterinarian or the Stewards to be shedding blood from one or both nostrils or is found to have bled internally. (An endoscopic examination of the horse, in order to confirm bleeding, may be performed by the practicing veterinarian in the presence of the Commission's ~~Licensee's~~ Veterinarian at the detention barn within one (1) hour of workout or race.)

(b) A horse which has been certified as a bleeder in another jurisdiction may be placed on the bleeder list provided that the other jurisdiction qualified it as a bleeder using criteria satisfactory to the Commission's ~~Licensee's~~ Veterinarian and the Stewards. It shall be the absolute responsibility of the Trainer to report bleeders from other jurisdictions to the Licensee's Veterinarian or Stewards on official forms from that State prior to entry.

(c) The Commission's ~~Licensee's~~ Veterinarian shall be responsible to maintain an up-to-date "bleeder" list and the list shall be available in the Racing Secretary's office.

(d) A horse in the Bleeder Program shall be required to be brought to a detention barn designated by the Licensee and approved by the Commission not later than three and one-half (3 ½) hours before post time for the race in which it is entered and shall remain in said detention barn (in its assigned stall) until called to the paddock prior to post time. During the 3 ½ hour period, the horse shall be under the care and custody of a groom or caretaker appointed by the Trainer. The approved Furosemide medication may be administered by a licensed practicing veterinarian in the detention barn within three (3) hours before post time. The practicing veterinarian shall make a report to the Stewards of the treatment on forms provided by the Stewards on the same day of treatment.

(e) (Deleted.)

(f) A horse which bled for the first time shall not be permitted to run for a period of ten (10) calendar days. A horse which bleeds a second time shall not be permitted to run for thirty (30) calendar days. A horse which bleeds a third time shall not be permitted to run for ninety (90) days. A horse which bleeds a fourth time shall be barred from further racing in the State of Delaware, except that if a horse's fourth bleeding incident occurs within one year of the first bleeding incident, then the horse shall not be barred but shall not be permitted to run for one year. If a horse has bled three times but at least twelve months have passed since the last bleeding incident, then if the horse bleeds for a fourth time, the horse shall not be permitted to run for twelve (12) months, and any further bleeding incidents will prevent the horse from racing for another twelve (12) month period. A positive endoscopic examination shall be classed as a first time bleeder.

Revised: 6/19/92.

### 15.04 Reports of Administration:

Before a licensed Veterinarian administers or prescribes

any drug or restricted substance for a horse, he shall ascertain by reasonable inquiry whether the horse has been entered to race at any track and, if the horse has been entered, he shall not administer or prescribe any drug or restricted substance within the time or manner restricted by these Rules.

If, however, an emergency exists involving the life or health of the horse, he may proceed to treat or prescribe for the horse but shall report the matter as promptly as practicable to the State Veterinarian and Stewards.

(a) Any Veterinarian practicing at any Delaware race track shall file a daily report with the Stewards and the Track Veterinarian as to any medication prescribed or administered or professional service performed. This report shall be filed in person or postmarked within a period of forty-eight (48) hours from the time of treatment. Detection of any unreported medication, drug or substance by the Commission's Chemist in a pre-race or post-race test may be grounds for disciplinary action against such Veterinarian.

(b) Such daily reports shall accurately reflect the identity of the horse treated, diagnosis, time of treatment, type and dosage of medication, drug or substance and method of administration.

(c) Such daily reports shall remain confidential except that the Commission's Licensee's Veterinarian may compile general data therefrom to assist the Commission in formulating policies or rules and the Stewards may review the same in investigating a possible violation of these rules. See Rule 11.02(d) respecting a public list of horses declared to race on medication.

(d) When making an entry, it shall be the duty of the Trainer or his representative, as required by Rule 11.02(d), to disclose and declare to the Racing Secretary or his representative whether said horse will race on any medication permitted by these rules.

#### **15.05 Report Prior to Race of Cessation or Reduction of Medication:**

For any horse entered to run in a race, a timely report of the elimination or reduction since its last race in the level of Phenylbutazone and/or similar medications administered to it at the time of such last race shall be made to the Commission's Licensee's Veterinarian by the horse's Owner, Trainer, attending Veterinarian and/or any other person having supervision over, or custody of, such horse.

Violation of this Rule will constitute grounds for disciplinary action.

#### **15.06 Bettors' Safeguard:**

To help protect against inconsistent performances, a horse which last raced after having been administered Phenylbutazone and/or similar medication shall not be permitted to race without having been administered the same or similar medication at a comparable level, unless the

Commission's Licensee's Veterinarian grants his prior, express approval that such horse may race notwithstanding that the medication program to which it was subjected at the time of its last race has subsequently been eliminated or reduced.

Violation of any aspect of this Rule by an Owner, Trainer, attending Veterinarian or any other person having supervision or custody of the horse will constitute grounds for disciplinary action as provided by these Rules.

#### **15.08 Detention Area:**

Each Licensee may provide and maintain on its grounds a fenced enclosure sufficient in size and facilities to accommodate stabling of horses temporarily detained for the taking of sample specimens for chemical testing; such detention area shall be under the supervision and control of the Commission's Licensee's Veterinarian.

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## **DEPARTMENT OF EDUCATION**

Statutory Authority: 14 Delaware Code,  
Section 122(d) (14 Del.C. 122(d))

### **Regulatory Implementing Order Certification Speech Language Pathologist**

#### **I. Summary of the Evidence and Information Submitted**

The Acting Secretary of Education seeks the consent of the State Board of Education to amend the regulation Certification for Speech Language Pathologist, page 23, Section 5 of the Specific Requirements in the *Manual for Certification of Professional Public School Personnel*. The amendment would remove the requirement of nine (9) credit hours of course work presently required. The content of this course work is covered in the content of the Master's Degree program that a Speech Language Pathologist is required to complete in order to obtain a state license. The nine hours have been an impediment for districts in the hiring process and the state license requirements already assure that the person has the required knowledge. Notice of the proposed regulation was published in the News Journal and the Delaware State News on May 24, 2000, in the form hereto attached as Exhibit A. The notice invited written comments and none were received from the newspaper advertisements.

#### **II. Findings of Facts**

The Acting Secretary finds that it is necessary to amend this regulation because the issuance of a state license requires that the person have the knowledge required for the position.

## III. Decision to Amend the Regulation

For the foregoing reasons, the Acting Secretary concludes that it is necessary to amend the regulation. Therefore, pursuant to 14 *Del. C.*, Section. 122, the regulation attached hereto as Exhibit B is hereby amended. Pursuant to the provisions of 14 *Del. C.*, Section. 122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

## IV. Text and Citation

The text of the regulation amended hereby shall be in the form attached hereto as Exhibit B, and said regulation shall be cited in the *Regulations of the Department of Education* and in the *Manual for Certification of Professional Public School Personnel*.

## V. Effective Date of Order

The actions hereinabove referred to were taken by the Acting Secretary pursuant to 14 *Del. C.*, Section. 122, in open session at the said Board's regularly scheduled meeting on May 18, 2000. The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware Register of Regulations.

IT IS SO ORDERED this 15th day of June, 2000.

Department of Education

Valerie A Woodruff, Acting Secretary of Education

Approved this 15th day of June, 2000.

STATE BOARD OF EDUCATION

Dr. James L. Spartz, President

Jean W. Allen, Vice President

Mary B. Graham, Esquire

John W. Jardine, Jr.

Dr. Joseph A. Pika

Dennis J. Savage

Dr. Claibourne D. Smith

AS AMENDED

## Speech Language Pathologist

1.0 ~~[Requirements for the Standard Certificate]~~ **[To qualify for a Standard License as a Speech Language Pathologist the candidate shall:]**

1.1 ~~[Licensed Speech/Hearing Pathologist in the State of Delaware; and]~~ **[Hold a Speech Hearing**

**Pathologist License from the State of Delaware.]**

1.2 ~~[Completion of]~~ **[Have completed]** a Master's degree program in the area of speech and hearing pathology.

## Regulatory Implementing Order

### Delaware Secondary School Athletic Association

## I. Summary of the Evidence and Information Submitted

The Acting Secretary of Education seeks the consent of the State Board of Education to repeal in its entirety the regulations of the Delaware Secondary School Athletic Association found in the 34th Annual Official Handbook of DSSAA, 1999-2000 and replace those regulations with these recommended regulations. These regulations have been totally reformatted to reflect the current format of the regulations of the Department of Education and editorial corrections have been made. The DSSAA regulations are now contained in the following sections: 1049 DSSAA Definitions, 1050 DSSAA Sportsmanship, 1051 DSSAA Senior High School Interscholastic Athletics, 1052 DSSAA Junior High/Middle School Interscholastic Athletics, 1053 DSSAA Waiver Procedures, 1054 DSSAA Investigative Procedure, 1055 DSSAA Appeal Procedure, and 1056 Recognition of Officials Association. In addition the following substantive changes have been made to the regulations:

DSSAA Senior High School Interscholastic Athletics:

### 1.0 Eligibility

1.2.8 and 1.2.8.1: This provision is being deleted from 1.2 Enrollment and Attendance because it deals with additional eligibility during a student's fifth year of attendance which is more appropriately addressed in 5.0 Participation.

1.3.2: This proposal reduces the penalty for non-compliance with 1.3 Resident and 1.4 Transfer by students who have reached the age of majority from ineligibility for 180 school days to ineligibility for 90 school days and makes it consistent with the penalty imposed on students who are minors.

1.5.1.5.1: This revision raises the permissible dollar value from \$25.00 to \$50.00 for complimentary items given to the athletes participating in a sanctioned tournament.

### 5.0 Participation

5.1.1, 5.1.2, and 5.1.2.1: These proposals do not fundamentally change 5.0 Participation but clarify it so that students and their parents will better understand that they are not guaranteed four seasons of participation in a particular sport but rather four opportunities to participate during a particular sports season. A fifth-year senior will be allowed

to compete only if a hardship condition precluded his/her graduation within the normal four-year period of eligibility and also caused the loss of all or part of one of his/her four opportunities to participate during a particular sports season, that student is not guaranteed additional eligibility if he/she returns for a fifth year simply because he/she did not participate for four seasons in a particular sport.

#### 7.0 Foreign Exchange Students

7.2: This revision makes 7.0 Foreign Exchange Students/Foreign Students more concise but does not change the intent or application of the rule. A foreign student who is not participating in a CSIET listed or other approved exchange program is considered a transfer student and is required to satisfy all DSSAA eligibility requirements including 3.0 Residence.

#### 11.0 Contracts Interchanged

11.2.2 and 11.4: These proposals clarify 11.0 Contracts Interchanged by clearly establishing the circumstances in which a forfeit will be awarded. If a game isn't played, it will be considered "no contest" unless a signed individual contract or a conference master contract was in place and one of the participating schools breached the agreement.

#### 17.0 Codes

17.2: This provision establishes that the DSSAA Board has adopted United States Lacrosse Association rules for the sport of girls' lacrosse.

#### 23.0 Sports Season and Practices

23.7.2, 23.7.2.1, 23.7.2.2, and 23.7.2.3: 23.7 currently prohibits coaches from having instructional contact with their returning players outside of the designated sports season. 23.7 and 23.7.2 prohibit coaches from also participating on teams which includes their returning players and from officiating contests in which their returning players are participating. This proposal relaxes 23.7.2 somewhat by permitting coaches to officiate contests in which their returning players are participating provided those contests are part of organized league competition. The proposal includes a detailed definition of organized league competition.

#### 24.0 Maximum Game Schedules and Designated Sports Season

24.4: This revision clearly differentiates between a "postponed" game (inclement weather, unplayable field conditions, visiting team bus breaks down, officials fail to appear, etc.) and a "rescheduled" game. A "postponed" game can be rescheduled at the convenience of the participating schools provided neither school plays more than four games in a week, while a "rescheduled" game is subject to the team limitation of three games per week with

the third game on Friday (no early dismissal), Saturday, or Sunday.

#### 26.0 Awards

26.5: This revision raises the permissible dollar value for non-symbolic competition awards from \$25.00 to \$50.00 per recipient which is consistent with the proposed increase in the dollar value of complimentary items.

#### 30.0 Use of Officials

30.2.2 and 30.2.3: Contest officials are currently required to attend an approved rules clinic and pass a rules examination in the same season at least every other year in order to work varsity games. They are required to satisfy both requirements in the same season at least every third year in order to work subvarsity games. Failure to satisfy both requirements in the same season for three consecutive years results in a loss of certification. This proposal permits a contest official who does not comply with the aforementioned requirements for three consecutive years to continue to work subvarsity games. DSSAA is experiencing a shortage of officials in several sports and this proposal will at least help to address the problem at the subvarsity level.

#### 31.0 Summer Camp Participation and Sponsorship

31.0: This proposal involves only a change in the name of the rule.

31.2.5: This revision eliminates unnecessary paperwork and streamlines the procedure for school related groups to provide financial assistance to students who are attending summer camps and clinics.

34.0 Commercial Camps and Clinics: This proposal changes the name of the rule and clarifies that the revised rule pertains to camps and clinics being conducted by both commercial and non-profit entities.

#### DSSAA Junior High/Middle School Interscholastic Athletics

##### 5.0 Participation

5.2: These revisions make 5.0 Participation for middle schools comparable to 5.0 Participation for high schools beginning with the 2003-2004 school year. Students in middle schools which permit 6th graders to participate will be eligible for three consecutive years from their first entry into 6th grade. Students in middle schools which restrict participation to 7th and 8th graders will be eligible for two consecutive years from their first entry into 7th grade. Instances of students repeating 8th grade despite being competent students are becoming more common and these students are participating in an extra season which amounts to de facto red shirting. Regardless of their motivation for repeating 8th grade, they are gaining an athletic advantage and adversely affecting the opportunities of other students.

**23.0 Maximum Game Schedules and Sports Seasons**

23.1: This proposal will increase the number of permissible contests in middle school wrestling from ten to twelve.

23.2 This change is similar to the proposed change to 24.4 for high schools. The difference between the middle school proposal and the high school proposal is that middle schools are restricted to a total of three regularly scheduled and makeup contests per week while high schools are restricted to a total of four regularly scheduled and makeup contests per week.

Notice of the proposed regulations was published in the News Journal and the Delaware State News on May 24,, 2000, in the form hereto attached as Exhibit A. The notice invited written comments and none were received from the newspaper advertisements.

**II. Findings of Facts**

The Acting Secretary finds that it is necessary to amend these regulations in order to clarify and up date the operations of DSSAA.

**III. Decision to Amend the Regulations**

For the foregoing reasons, the Acting Secretary concludes that it is necessary to amend the regulations. Therefore, pursuant to 14 Del. C., Section. 122, the regulations attached hereto as Exhibit B are hereby amended. Pursuant to the provisions of 14 Del. C., Section. 122(e), the regulations hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

**IV. Text and Citation**

The text of the regulations hereby amended shall be in the form attached hereto as Exhibit B, and said regulations shall be cited in the Regulations of the Department of Education.

**V. Effective Date of Order**

The actions hereinabove referred to were taken by the Acting Secretary pursuant to 14 Del. C., Section. 122, in open session at the said Board's regularly scheduled meeting on June 15, 2000. The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware Register of Regulations.

IT IS SO ORDERED this 15th day of June, 2000.

DEPARTMENT OF EDUCATION

Valerie A Woodruff, Acting Secretary of Education

Approved this 15th day of June, 2000.

**STATE BOARD OF EDUCATION**

Dr. James L. Spartz, President

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**1000 Student Activities**

1001 Participation in Extra-Curricular Activities

**1 DE Reg 173 (8/1/97)**

1002 Membership in Fraternities and Sororities

**1 DE Reg 723 (12/1/98)**

1025 Delaware Secondary School Athletic Association (DSSAA)

**1 DE Reg 725 (12/1/97)**

1049 DSSAA Definitions

1050 DSSAA Sportsmanship

1051 DSSAA Senior High School Interscholastic Athletics

1052 DSSAA Junior High/Middle School Interscholastic Athletics

1053 DSSAA Waiver Procedure

1054 DSSAA Investigative Procedure

1055 DSSAA Appeal Procedure

1056 Recognition of Officials' Associations

**1001 Participation in Extra-Curricular Activities**

1.0 In order to be eligible for participation in non-credit granting extra-curricular activities, each participant shall pursue a regular course of study or its equivalent as approved by the Department of Education, and must be passing at least five credits beginning with the 1998-1999 school year. Two of these credits must be in the academic areas such as English, mathematics, science, or social studies.

2.0 Any twelfth grade student who wishes to participate in extra-curricular activities shall be passing all courses necessary for graduation from high school.

3.0 A student whose work in any regular marking period does not meet the above standards shall be ineligible to participate in extra-curricular activities for the next marking period. In case of a conflict between the mark of a report period or regular final grade, the semester or final mark shall determine eligibility. When a student makes up a failure during the summer or earns the required credit or credits, the student shall become eligible.

4.0 Local school boards may establish requirements over and above these minimums prescribed for eligibility.

**See 1 DE Reg 173 (8/1/97)**

**1002 Membership in Fraternities and Sororities**

1.0 No pupil enrolled in a public school in any school district of Delaware shall be a member of a fraternity or sorority, or any other secret, exclusive, self-perpetuating social organization composed in whole or part of public school pupils which seeks to organize and perpetuate itself by taking in members from among the pupils enrolled in such school based upon the decisions of the membership of such organizations rather than from the free choice of any pupil in such school who is otherwise qualified to fulfill the special aims of such an organization.

1.1 The local board of education is hereby authorized upon finding that any pupil is a member of a high school fraternity, sorority or social organization as above defined to exclude such pupil from representing the school in any public activity, contest, or exhibition such as athletic, literary, or dramatic and from participating in any school activity other than class attendance and from holding a position of authority in any school or class organization.

1.2 Nothing in this regulation shall be deemed as prohibiting the local board of education from excluding any pupil from class in those instances where the behavior of such pupil is detrimental to school discipline.

1.3 Any definition of fraternity, sorority, or secret exclusive self-perpetuating social organization shall not be deemed to include youth organizations or fraternal orders, religious and church organizations, or similar organizations which are institutionally sponsored and approved and which are organized with responsible adult leadership and supervision.

1.4 Where schools do approve of student organizations and clubs which do not fall under the definition of fraternity, sorority, or secret organization, it becomes the responsibility of the school administration and the sponsoring persons to develop these recommended procedures:

1.4.1 establishment of the purposes and criteria for membership in the organization;

1.4.2 establishment of guidelines to be followed in the selection of members; and

1.4.3 establishment of methods to notify applicants or candidates as to acceptance or non-acceptance as a member in the organization. This procedure assures that students are made aware of the reasons for nonadmittance to membership selectivity.

**See 1 DE Reg 723 (12/1/98)**

**1025 Delaware Secondary School Athletic Association (DSSAA)**

1.0 The Delaware Secondary School Athletic Association (DSSAA) shall, as the official designee of the Secretary of Education, have the authority to implement the Department of Education's rules and regulations governing the conduct of interscholastic athletics. This authority is

granted with oversight by the Department of Education. Disputes involving the rules and regulations governing interscholastic athletics are subject to State Board review.

2.0 The Delaware Secondary School Athletic Association shall be under the general management of a Board of Directors with the Education Associate for Interscholastic Athletics in the Department of Education serving as the Executive Director. All recommendations for modifying the regulations must be proposed by the Secretary of Education and approved by the State Board of Education with the advice and guidance of the DSSAA Board of Directors.

3.0 The principals of middle level and high school member schools shall be responsible for the conduct of the interscholastic athletic program in which representative teams participate including the organization and scheduling of individual and team sports.

4.0 All interscholastic athletic activities in the middle level and high school shall be conducted in accordance with the Department of Education's regulations and as they may be amended hereafter as proposed by the Secretary of Education and approved by the State Board with the advice and guidance of the DSSAA Board of Directors.

**See 1 DE Reg 725 (12/1/97)**

**1049 DSSAA Definitions**

1.0 The following definitions shall apply to both Senior High and Junior High/Middle School Interscholastic Athletics

1.1 Commercial Sports Camp: A camp operated for profit which provides coaching or other sports training for a fee.

1.2 Scrimmage: An informal competition between schools in which the officials are not compensated, score is not kept, the time periods are modified, the results of the competition are not reported to the media, the coaches may interrupt play to provide instruction and the competition is strictly for practice purposes.

1.3 Professional Team: A team having one or more members who have received, or are receiving directly or indirectly, monetary consideration for their athletic services.

**1050 DSSAA Sportsmanship**

1.0 Member schools are required to conduct all of their athletic affairs with other schools in a spirit of good sportsmanship. Acts which are prima facie evidence of a failure to abide by this rule are those which are noted below and others of a similar nature which transgress the usually accepted code for good sportsmanship.

1.1 Failure to provide for proper control of spectators at a contest. When the number of spectators is expected to be large in relation to the seating capacity of the facility, uniformed state, county, or local police shall be



provided for crowd control. The host school is expected to take reasonable and proper steps to assure crowd control under any foreseeable conditions.

1.2 Failure of a team or competitor to stay in a contest until its normal end when failure to do so is related to dissatisfaction with the officiating of the contest, unless the physical safety of the team or competitor would have been endangered by continuing the contest.

1.3 Harassment of game officials by a coach. Going onto the playing surface to interrupt a contest in protest of a decision by an official; conduct by a coach, team member, or any individual in the official party which invokes a penalty against the team; continued and visible actions by a coach which indicate to the team and/or to the spectators that the coach believes the game is being improperly officiated; public demonstrations with game officials which indicate to others extreme dissatisfaction with the officiating; and such related actions when exhibited in aggravated form are evidence of poor sportsmanship.

1.4 Failure of a school to use every means at its disposal to impress upon its faculty, student body, team members, coaching staff, and spectators the importance of good sportsmanship before, during, and after athletic contests. The host school is encouraged to read a brief statement concerning sportsmanship prior to the start of each athletic contest.

1.5 Failure of an administrator, athletic director, coach, athlete, official, or spectator to comply with the directions stipulated in the following Code of Interscholastic Athletics:

1.5.1 The School Administrator and Athletic Director shall:

1.5.1.1 Encourage and promote friendly relations and good sportsmanship throughout the school by requiring courtesy and proper decorum at all times, by familiarizing students and others in the community with the ideals of good sportsmanship, and by publicizing these concepts and attitudes so that all members of the school community understand and appreciate their meaning.

1.5.1.2 Review the Sportsmanship Rule with all athletic staff.

1.5.1.3 Insist upon strict compliance with all DSSAA rules and regulations.

1.5.1.4 Insist upon adequate safety provisions for both participants and spectators in all activities.

1.5.1.5 Encourage all to judge the success of the interscholastic athletic program based on the attitude of the participants and spectators rather than on the number of games won or lost.

1.5.1.6 Insist that all participants adhere to the highest standards of good sportsmanship as a means of ensuring desirable spectator attitudes.

1.5.1.7 Provide sanitary and attractive

facilities for the dressing and housing of visiting teams and officials.

1.5.2 The Coach shall:

1.5.2.1 Demonstrate high ideals, good habits, and desirable attitudes in his/ her personal and professional behavior and demand the same of his/her players.

1.5.2.2 Recognize that the purpose of competition is to promote the physical, mental, social, and emotional well-being of the individual players and that the most important values of competition are derived from playing the game fairly.

1.5.2.3 Be a modest winner and a gracious loser.

1.5.2.4 Maintain self-control at all times and accept adverse decisions without public display of emotion or dissatisfaction with the officials. Register disagreement through proper channels.

1.5.2.5 Employ accepted educational methods in coaching and give his/her players an opportunity to develop and use initiative, leadership, and judgement.

1.5.2.6 Pay close attention to the physical well-being of his/her players, refusing to jeopardize the health of an individual for the sake of improving his/her team's chances to win.

1.5.2.7 Teach athletes that it is better to lose fairly than to win unfairly.

1.5.2.8 Discourage gambling, profanity, abusive language, and similar violations of the true sportsman's or sportswoman's code.

1.5.2.9 Refuse to disparage an opponent, an official, or others associated with interscholastic athletics and discourage gossip and rumors about them.

1.5.2.10 Properly supervise the athletes under his/her immediate care.

1.5.3 The Participant (athletes and cheerleaders) shall:

1.5.3.1 Be responsible for the perpetuation of interscholastic athletics. Strive to enhance the image of athletics not only as a member of a team but also as a member of your school and community.

1.5.3.2 Be courteous to the visiting team. Your opponents wish to excel as much as you do. Respect their efforts.

1.5.3.3 Play hard to the limit of your ability regardless of discouragement. The true athlete does not give up, quarrel, cheat, bet, or grandstand.

1.5.3.4 Be modest when successful and be gracious in defeat. A true sportsman or sportswoman does not offer excuses for failure.

1.5.3.5 Understand and observe the playing rules of the game and the standards of eligibility.

1.5.3.6 Respect the integrity and judgement of the officials and accept their decisions without

complaint.

1.5.3.7 Respect the facilities of the host school and do not violate the trust entailed in being a guest.

1.5.4 The Official shall:

1.5.4.1 Know the rules and interpretations and be thoroughly trained to administer them.

1.5.4.2 Maintain self-control in all situations.

1.5.4.3 When enforcing the rules, do not make gestures or comments that will embarrass the players or coaches.

1.5.4.4 Be impartial and fair, yet firm, in all decisions. A good official will not attempt to compensate later for an unpopular decision.

1.5.4.5 Refrain from commenting upon or discussing a team, player, or game situation with those not immediately concerned.

1.5.4.6 Conduct the game so as to enlist the cooperation of the players, coaches, and spectators in promoting good sportsmanship.

1.5.5 The Spectator shall:

1.5.5.1 Realize that he/she represents the school just as definitely as does a member of the team, and that he/she has an obligation to be a true sportsman or sportswoman and to encourage through his/her behavior the practice of good sportsmanship by others.

1.5.5.2 Recognize that good sportsmanship is more important than victory by approving and applauding good team play, individual skill, and outstanding examples of sportsmanship and fair play exhibited by either team. The following are some examples of poor sportsmanship which shall not be tolerated:

1.5.5.2.1 Profanity, vulgarity, obscene gestures, abusive language, and/or derogatory remarks.

1.5.5.2.2 Throwing objects.

1.5.5.2.3 Going onto the playing surface and interrupting a contest.

1.5.5.2.4 Use of alcohol or other controlled substances.

1.5.5.3 Respect the judgement and integrity of the officials, recognizing that their decisions are based upon game conditions as they observe them.

1.5.5.4 Treat visiting teams and officials as guests extending to them every courtesy.

1.5.5.5 Be modest in victory and gracious in defeat.

## 2.0 Processing Violations

### 2.1 Procedures

2.1.1 The Executive Director is specifically authorized to pursue any matter which, on the surface, has indications of being a sportsmanship violation.

2.1.2 Within twenty (20) calendar days of the incident, an alleged sportsmanship violation must be

reported in writing to the Executive Director by the administrative head of a member school or by the Executive Board of an officials' association.

2.1.3 The Executive Director shall transmit a copy of the report to the principal of the school(s) involved.

2.1.4 Each principal concerned shall investigate and provide such information or answers to the report as are appropriate.

2.1.5 The Executive Director shall provide member schools and officials' associations with a specially designed form to facilitate the proper reporting of sportsmanship related incidents.

2.1.6 Upon receipt of all reports, the Executive Director shall review the documents and inform the school(s) involved of any recommendations. The Executive Director may, in turn, refer the matter to the Sportsmanship Committee to investigate and adjudicate what appears to be a violation of the Sportsmanship Rule.

2.1.7 The Sportsmanship Committee shall review such available evidence as it deems necessary to reach a conclusion. Actions such as requesting reports and conducting interviews should not be interpreted as casting aspersions on a school adhering to DSSAA regulations, but as an effort to keep all parties properly informed. Penalties up to and including suspensions of member schools may be imposed by the Sportsmanship Committee.

2.1.8 A copy of the Sportsmanship Committee's action shall be filed with the Executive Director and the administrative head of the school(s) involved.

### 2.2 Policies

2.2.1 The basis for the following policy statement is that a member school shall not be represented by individuals whose conduct reflects discredit upon the school. Insofar as unsportsmanlike actions by participants and spectators are concerned, the Sportsmanship Committee shall refer to the items previously identified in the Code of Interscholastic Athletics as well as the following guidelines:

2.2.1.1 The school whose administrator or athletic director behaves in a manner likely to have an adverse influence on the attitudes of the players or spectators may be provided with a choice of:

2.2.1.1.1 Reprimanding its administrator or athletic director and providing written documentation to the Executive Director, or

2.2.1.1.2 Suspending its administrator or athletic director from representing the school in athletic events for a specified period of time not to exceed 180 school days, or

2.2.1.1.3 Having the entire school disciplined by DSSAA.

2.2.1.2 An athlete shall not strike an official, opponent, coach, or spectator or display gross misconduct before, during, or after an athletic event. The

athlete, depending on the seriousness of the act, may be declared ineligible by the principal, Executive Director, or Sportsmanship Committee for a specified period of time not to exceed 180 school days.

2.2.1.3 In the case of spectators physically assaulting an official, coach, or player, the school may be given the option of either taking legal action against the offender or accepting discipline from DSSAA.

2.2.1.4 Schools that do not fully cooperate in promoting the spirit of the Sportsmanship Rule may be disciplined by DSSAA.

2.2.1.5 The school whose coach behaves in a manner likely to have an adverse influence on the attitudes of the players or spectators may be provided with a choice of:

2.2.1.5.1 Reprimanding its coach and providing written documentation to the Executive Director, or

2.2.1.5.2 Suspending its coach from representing the school in athletic events for a specified period of time not to exceed 180 school days, or

2.2.1.5.3 Having the entire school disciplined by DSSAA.

2.2.1.6 An administrator, athletic director, or coach may be considered as having committed an unsportsmanlike act if:

2.2.1.6.1 He/she makes disparaging remarks about the officials during or after a game either on the field of play, from the bench, or through any public news media, or

2.2.1.6.2 He/she argues with the official or indicates with gestures or other physical actions his/her dislike for a decision, or

2.2.1.6.3 He/she detains the official on the field of play following a game to request a ruling or explanation of some phase of the game, or

2.2.1.6.4 He/she makes disparaging or unprofessional remarks about another school's personnel.

2.2.1.7 All actions by a member school resulting from an investigation relative to the above policies shall be subject to approval by the Executive Director and/or the Sportsmanship Committee.

### 2.3 Penalties

#### 2.3.1 Game Ejection

2.3.1.1 A player or coach disqualified before, during, or after a contest for unsportsmanlike and flagrant verbal or physical misconduct shall be suspended from the next regularly scheduled contest at that level of competition and all other contests in the interim at any level of competition in addition to any other penalties which DSSAA or a conference may impose.

2.3.1.1.1 A player who leaves the team bench area and enters the playing field, court, or mat

during a fight or other physical confrontation shall be ejected from the contest. A player who commits such an offense and is ejected by the game officials shall also be suspended from the next regularly scheduled contest at that level of competition and all other contests at any level of competition in the interim. Additional penalties may be imposed if a player leaving the bench area becomes involved in the altercation.

2.3.1.2 A disqualified player or coach may not be physically present at any contest in that sport during his/her suspension.

2.3.1.3 If a coach is disqualified from the final contest of the season, his/her suspension shall carry over to the next year in that sport. In the case of an athlete, the same penalty shall apply if said athlete retains eligibility in that sport.

2.3.1.3.1 Coaches who do not fulfill their penalty in the same sport shall be disqualified for the appropriate length of time in their subsequent coaching assignment.

2.3.1.3.2 Seniors shall fulfill their penalty in the post-season all-star game in that sport. If not chosen to participate in the all-star game, they shall fulfill their penalty in another sport during the same season or another sport during a subsequent season. When a senior is disqualified from the last game of his/her high school career, the member school is requested to take appropriate administrative action to discipline the offending student.

#### **See 3 DE Reg 436 (9/1/99)**

2.3.1.4 A player or coach ejected for a second time during the same season shall be subjected to a two-game suspension and meet, in a timely fashion, with the Sportsmanship Committee accompanied by his/her principal or designee and, in the case of an athlete, by his/her coach.

2.3.2 The following penalties represent degrees of discipline in enforcing the Sportsmanship Rule:

2.3.2.1 Reprimand - a reprimand may be given by the Executive Director or the Sportsmanship Committee. It is official notice that an unethical or unsportsmanlike action has occurred, is a matter of record and that such an occurrence must not be repeated.

2.3.2.2 Probation - probation is a more severe penalty and may be imposed by the Executive Director or the Sportsmanship Committee on a member school, a particular team of a member school, a particular coach or athlete of a member school, or an official. Probation may be expressed in one of the following ways:

2.3.2.2.1 Conditional probation wherein the offending party may participate in regular season contests, sanctioned events, and conference and state championships provided he/she/the school files with DSSAA a plan indicating the measures that shall be taken to alleviate the problem which caused him/her/the school to be placed on probation, or

2.3.2.2.2 Restrictive probation wherein a member school or a particular team of a member school may engage in its regular season schedule but may not enter any sanctioned events, participate in any playoff toward a conference or state championship, or be awarded a conference or state championship.

2.3.2.3 Suspension - a member school, a particular team of a member school, a particular coach or athlete of a member school, or an official may not participate in any DSSAA sanctioned interscholastic competition.

#### 2.4 Appeals

2.4.1 Decisions of the Executive Director or Sportsmanship Committee may be appealed to the DSSAA Board of Directors in accordance with the procedure found in Regulation 1055 DSSAA Appeal Procedure. However, Notice of Appeal shall be served by certified mail within ten (10) calendar days after receipt by the appellant of written notice of the action of the Executive Director or Sportsmanship Committee.

### 1051 DSSAA Senior High School Interscholastic Athletics

#### 1.0 Eligibility

No student shall represent a school in an interscholastic scrimmage or contest if he/she does not meet the following requirements:

##### 1.1 Age

1.1.1 Students who become 19 years of age on or after June 15 shall be eligible for all sports during the school year provided all other eligibility requirements are met. Students who have attained the age of 19 prior to June 15 shall be ineligible for all sports.

##### See 3 DE Reg 437 (9/1/99)

1.1.2 In determining the age of a contestant, the birth date as entered on the birth record of the Bureau of Vital Statistics shall be required and shall be so certified on all eligibility lists.

1.1.3 Requests for waiver of the age requirement shall be considered only for participation on an unofficial, non-scoring basis in non-contact or non-collision sports.

##### 1.2 Enrollment and Attendance

1.2.1 A student must be legally enrolled in the high school which he/she represents and must be in regular attendance by September 20.

1.2.1.1 A student who enters school after September 20 shall not be eligible to participate until February 1.

1.2.1.2 A student who enters school after February 1 shall not be eligible to participate during the remainder of the school year.

1.2.2 A shared-time student who attends two (2) different schools during the regular school day shall be eligible to participate only at his/her home school.

1.2.2.1 A student's home school shall be the school at which he/she is receiving instruction in the core academic areas and at which he/she is satisfying the majority of his/her graduation requirements.

1.2.2.2 A shared-time student shall not be eligible to participate at the school at which he/she is receiving only specialized educational instruction; e.g., vocational training.

1.2.3 A student who is participating in the Delaware School Choice Program, as authorized by 14 *Del. C.*, Ch. 4, is obligated to attend the "choice school" for a minimum of two (2) years unless the student's custodial parent(s) or legal guardian(s) relocate to a different school district or the student fails to meet the academic requirements of the "choice school". If a student attends a "choice school" for less than two (2) years and subsequently returns to his/her home school, the student must receive a release from the "choice district" in order to legally enroll at his/her home school. Without a release, the student would not be eligible to participate in interscholastic athletics (see 1.4.11).

1.2.4 A student may not participate in a practice, scrimmage, or contest during the time a suspension, either in-school or out-of-school, is in effect or during the time he/she is assigned to an alternative school for disciplinary reasons.

1.2.5 A student must be legally in attendance at school in order to participate in a practice, scrimmage, or contest except when excused by proper school authorities.

1.2.5.1 A student who is not legally in attendance at school due to illness or injury shall not be permitted to participate in a practice, scrimmage, or contest on that day.

1.2.6 An ineligible student who practices in violation of these rules shall, when he/she regains his/her eligibility, be prohibited from practicing, scrimmaging, or competing for an equivalent number of days.

1.2.7 Failure to complete a semester or absence for one or more semesters for reasons other than personal illness shall disqualify a student for ninety (90) school days from the date of reentry to school.

##### 1.3. Residence

1.3.1 A student must be living with his/her custodial parent(s) or court appointed legal guardian(s) in the attendance zone of the school which he/she attends in order to be eligible for interscholastic athletics in that school. In cases of joint custody, the custodial parent shall be the parent with actual physical placement as determined by court action.

1.3.1.1 Maintaining multiple residences in order to circumvent this requirement shall render the student ineligible.

1.3.1.2 A student who, under authority of

a policy of the local board of education, remains in a school he/she has been attending after his/her legal residence changes to the attendance zone of a different school in the same school district, may exercise, prior to the first official student day of the subsequent academic year, a one time election to remain at his/her current school and thereby not lose athletic eligibility.

1.3.1.2.1 However, if a student chooses to remain at his/her current school and subsequently transfers to the school in his/her new attendance zone on or after the first official student day of the subsequent academic year, he/she shall be ineligible, for ninety (90) school days.

1.3.1.3 If a student changes residence to a different attendance zone after the start of the last marking period and is granted permission to continue attending his/her present school via established district policy for such, the student shall retain his/her athletic eligibility in that school for the remainder of the school year provided all other eligibility requirements are met.

1.3.1.4 A student shall be permitted to complete his/her senior year at the school he/she is attending and remain eligible even though a change of legal residence to the attendance zone of another school has occurred. This provision shall refer to any change of legal residence that occurs after the completion of the student's junior year.

1.3.1.5 A student may be residing outside of the attendance zone of the school which he/she attends if the student is participating in the Delaware School Choice Program as authorized by 14 Del. C., Ch. 4.

1.3.1.6 A student who is a non-resident of Delaware shall be eligible at a public, vocational-technical, or charter school if, in accordance with 14 Del. C., § 607, his/her custodial parent or court appointed legal guardian is a full-time employee of that district.

**See 3 DE Reg 437 (9/1/99)**

1.3.2 Notwithstanding 1.4, a student who reaches the age of majority (18), leaves his/her parents' place of residency and jurisdiction thereof, and moves to another attendance zone to continue his/her high school education shall be ineligible to participate in athletics for 90 school days commencing with the first day of official attendance. This provision shall not apply to a student participating in the Delaware School Choice Program, as authorized by 14 Del. C., Ch. 4, provided the student's choice application was properly submitted prior to the his/her change of residence.

**See 3 DE Reg 437 (9/1/99)**

**1.4 Transfer**

1.4.1 A student who has not previously participated in interscholastic athletics (previous participation is defined as having practiced, scrimmaged, or competed in grades 9 through 12 except as specified in 5.2) is released by a proper school authority from a sending school, has completed the registration process at the receiving school, and is pursuing an approved course of

study shall be eligible immediately upon registration provided he/she meets all other DSSAA eligibility requirements.

1.4.2 If a student has previously participated in interscholastic athletics, he/she shall be ineligible for a period of ninety (90) school days commencing with the first day of official attendance in the receiving school unless one of the following exceptions applies:

1.4.2.1 The transfer is within a school district and is approved by the district's superintendent pursuant to local school board policy.

1.4.2.2 The transfer is caused by court action, court action being an order from a court of law affecting legally committed students.

1.4.2.2.1 In the case of a transfer of guardianship/custody, the transfer shall be the result of a court order signed by a judge, commissioner, or master of a court of competent jurisdiction. A petition for the transfer of guardianship/custody, an affidavit, or a notarized statement signed by the affected parties shall not be sufficient to render the student eligible to participate in interscholastic athletics.

1.4.2.3 The transfer is the result of a change in residence by the custodial parent(s) or court appointed legal guardian(s) from the attendance zone of the sending school to the attendance zone of the receiving school. A change in residence has occurred when all occupancy of the previous residence has ended.

1.4.3 A student who transfers from a public, private, vocational-technical, charter, or choice school to another public, private, vocational-technical, charter, or choice school shall be eligible in the receiving school immediately, except as prohibited by 1.4.10.1, when the custodial parent(s) or court appointed legal guardian(s) has established a new legal residence in another public school attendance zone different from the one in which the custodial parent(s) or court appointed legal guardian(s) resided for attendance in the sending school. In the case of a transfer to a public or vocational-technical school, the new legal residence must be in the attendance zone of the receiving school.

1.4.4 Promotion to the ninth grade from a school whose terminal point is the eighth grade, or to the tenth grade from a junior high school whose terminal point is the ninth grade, shall not constitute a transfer. Students so promoted shall be eligible.

1.4.5 If a waiver of the ninety (90) school day ineligibility clause is requested, the parent(s) or court appointed legal guardian(s) is responsible for providing documentation to the DSSAA Board of Directors to support the request. Documentation should include the following for each specific request:

1.4.5.1 Program of study (a multi-year, hierarchical sequence of courses with a common theme or

subject matter leading to a specific outcome).

1.4.5.1.1 Student schedule card.

1.4.5.1.2 Student transcript.

1.4.5.1.3 Current course descriptions from both the sending and receiving schools.

1.4.5.1.4 Statement from the principal of the sending school indicating that a significant part of the student's desired program of study will not be offered and that it will place the student at a definite disadvantage to delay transfer until the end of the current school year.

1.4.5.1.5 Statement from the principal of both the sending and receiving schools that the student is not transferring primarily for athletic advantage as defined in 1.4.8.1 through 1.4.8.4.

**See 3 DE Reg 437 (9/1/99)**

1.4.5.2 Finances

1.4.5.2.1 Proof of extreme financial hardship caused by significant and unexpected reduction in income and/or increase in expenses.

1.4.5.2.2 Statement from the principal of both the sending and receiving schools that the student is not transferring primarily for athletic advantage as defined in 1.4.8.1 through 1.4.8.4.

**See 3 DE Reg 437 (9/1/99)**

1.4.6 No waiver shall be required for students who transfer after the close of the sending school's academic year and prior to the first official student day of the receiving school's academic year provided:

1.4.6.1 The student has completed the registration process at the receiving school prior to the first official student day of the academic year. The first official student day shall be defined as the first day on which students in any grade in that school are required to be in attendance.

**See 3 DE Reg 437 (9/1/99)**

1.4.6.2 The student has not attended class, excluding summer school, or participated in a practice, scrimmage, or contest at the sending school since the close of the previous academic year.

1.4.6.3 The student's legal residence is located in the attendance zone of the receiving school.

1.4.6.4 All other DSSAA eligibility requirements have been met.

1.4.7 In cases of joint custody when a primary residence is established, a change in a student's primary residence without court action subjects the student to the ninety (90) school day ineligibility clause.

1.4.8 A change of custody or guardianship for athletic advantage shall render a student ineligible under the ninety (90) school day ineligibility clause if the primary reason for his/her transfer is one of the following:

1.4.8.1 To seek a superior team.

1.4.8.2 To seek a team more compatible with his/her abilities.

1.4.8.3 Dissatisfaction with the philosophy, policies, methods, or actions of a coach or administrator pertaining to interscholastic athletics.

1.4.8.4 To avoid disciplinary action imposed by the sending school related to or affecting interscholastic athletic participation.

1.4.9 If a student transfers at any time during the school year for reasons other than those specified in 1.4.2, the student shall be ineligible for a period of ninety (90) school days commencing with the first day of official attendance in the receiving school except as permitted by 1.4.1.

1.4.9.1 If a student transfers with fewer than ninety (90) school days left in the academic year, he/she shall be ineligible for the remainder of the school year but shall be eligible beginning with the subsequent fall sports season provided he/she is in compliance with all other eligibility requirements.

1.4.10 A student who transfers from a public, private, vocational-technical, or charter school to a school of choice, as authorized by 14 *Del. C.*, Ch. 4, shall be eligible immediately provided the transfer occurs after the close of the sending school's academic year and prior to the first official student day of the receiving school's academic year and the student satisfies the conditions stipulated in 1.4.6.1, 1.4.6.2 and 1.4.6.4.

1.4.10.1 A student who transfers from a school of choice to another school of choice shall be ineligible to participate in interscholastic athletics during his/her first year of attendance at the receiving school unless the receiving school sponsors a sport(s) not sponsored by the sending school in which case the student shall be eligible to participate in that sport(s) only.

1.4.11 A student who transfers from a school of choice to either a private school or, after completing his/her two-year commitment, to a public, vocational technical, or charter school shall be eligible immediately provided the transfer occurs after the close of the sending school's academic year and prior to the first official student day of the receiving school's academic year and the student satisfies the conditions stipulated in 1.4.6.1 through 1.4.6.4.

**See 3 DE Reg 437 (9/1/99)**

1.5 Amateur

1.5.1 A student may not participate in an interscholastic sport unless he/she is considered an amateur in that sport. A student forfeits his/her amateur status if he/she does any of the following:

1.5.1.1 Knowingly plays on or against a professional team. This rule does not apply to an athlete who participates in summer baseball or other sports outside of the school's sports season in which he/she does not

receive any form of remuneration for athletic services.

1.5.1.2 Signs a professional contract, accepts reimbursement for expenses to attend a professional tryout, or receives financial assistance in any form from a professional sports organization.

1.5.1.3 Enters competition under an assumed name. The surname and given name used by any player in his/her first game of interscholastic competition shall be used during the remainder of the student's interscholastic career. Any change in spelling or use of another name shall be regarded as an attempt to evade this rule unless the change has been properly certified by the player to the principal of the school.

1.5.1.3.1 In the event a false name is used without the knowledge and consent of the player, or if the player has participated in a game without having his/her name appear in the box score, or if his/her name appears in the box score of a game in which he/she did not play, it becomes the sole obligation of the player involved to report the error or omission to the principal of the school within 48 hours from the time such game was played.

1.5.1.4 Receives remuneration of any kind or accepts reimbursement for expenses in excess of the actual and necessary costs of transportation, meals, and lodging for participating in a team or individual competition or an instructional camp or clinic. Reimbursement for the aforementioned expenses is permitted only if all of the participants receive the same benefit.

**See 3 DE Reg 437 (9/1/99)**

1.5.1.5 Receives cash or a cash equivalent (savings bond, certificate of deposit, etc.), merchandise or a merchandise discount, (except for discount arranged by school for part of team uniform) a reduction or waiver of fees, a gift certificate, or other valuable consideration as a result of his/her participation in an organized competition or instructional camp/clinic.

1.5.1.5.1 Accepting an event program and/or a complimentary item(s) (t-shirt, hat, equipment bag, etc.) that is inscribed with a reference to the event, has an aggregate value of no more than \$50.00, and is provided to all of the participants, shall not jeopardize his/her amateur status.

**See 3 DE Reg 525 (10/1/99)**

1.5.1.6 Sells or pawns awards received.

1.5.1.7 Uses his/her athletic status to promote or endorse a commercial product or service in a newsprint, radio, or television advertisement or personal appearance.

1.5.1.8 Receives an award prohibited by DSSAA for being a member of some athletic organization.

1.5.2 Accepting compensation for teaching lessons, coaching, or officiating shall not jeopardize his/her amateur status.

1.5.3 A student who forfeits his/her amateur

status under the provisions of this rule is ineligible to participate at the interscholastic level in the sport in which the violation occurred. He/she may be reinstated after a period of up to 180 school days provided that during the suspension, he/she complies with all of the provisions of this rule. The suspension shall date from the time of the last offense.

**2.0 Use of Influence for Athletic Purposes**

2.1 The use of influence by a person(s) employed by or representing a member school including members of alumni associations, booster groups, and similar organizations to persuade, induce, or facilitate the enrollment of a student in that school for athletic purposes shall render the student ineligible for up to 180 school days from the date the charge is substantiated. In addition, the offending school shall be placed on probation, as determined by the DSSAA Board of Directors, and the offending employee, if a coach, shall be suspended for up to 180 school days from the date the charge is substantiated.

2.2 The use of influence for athletic purposes shall include, but not be limited to, the following:

2.2.1 Offer of money, room, board, clothing, transportation, or other valuable consideration to a prospective athlete or his/her parent(s) or court appointed legal guardian(s).

2.2.2 Offer of waiver/reduction of tuition or financial aid if based, even partially, on athletic considerations.

2.2.3 Preference in job assignments or offer of compensation for work performed in excess of what is customarily paid for such services.

2.2.4 Offer of special privileges not accorded to other students.

2.2.5 Offer of financial assistance including free or reduced rent, payment of moving expenses, etc., to induce a prospective athlete or his/her parent(s) or court appointed legal guardian(s) to change residence.

2.3 A school employee or Board approved volunteer may not initiate contact or request that a booster club member, alumnus, or player initiate contact with a student enrolled in another school or his/her parent(s) or court appointed legal guardian(s) in order to persuade the student to enroll in a particular school for athletic purposes. Illegal contact shall include, but not be limited to, letters, questionnaires or brochures, telephone calls, and home visits or personal contact at athletic contests.

2.3.1 If a coach or athletic director is contacted by a prospective athlete or his/her parent(s) or court appointed legal guardian(s), the former must refer the individual(s) to the principal or school personnel responsible for admissions.

2.3.2 A school employee or Board approved volunteer may discuss the athletic program with a prospective student or his/her parent(s) or court appointed

legal guardian(s) during an open house or approved visit initiated by the parent(s) or court appointed legal guardian(s).

2.3.2.1 A school employee or Board approved volunteer may provide information concerning sports offered, facilities, conference affiliation, and general athletic policies. However, he/she is not permitted to state or imply in any way that his/her athletic program is superior to that of another school or that it would be more beneficial or advantageous for the prospective student to participate in athletics at his/her school.

2.3.3 A school employee or Board approved volunteer may conduct an informational presentation at a feeder school provided he/she observes the restrictions specified in 2.3.2.1.

2.4 If the number of applicants under the Delaware School Choice Program exceeds the number of available student openings, the selection criteria established by the district shall not include athletic considerations.

### 3.0 Non-School Competition

3.1 A student may participate on a non-school team or in a non-school individual event both during and out of the designated sport season. However, the student owes his/her primary loyalty and allegiance to the school team of which he/she is a member. A school shall have the authority to require attendance at practices and contests and students not in compliance shall be subject to disciplinary action as determined by the school.

3.2 Participation on a non-school team or in a non-school individual event shall be subject to the following conditions:

3.2.1 With the exception of organized intramurals, the student may not wear school uniforms or use school equipment.

3.2.2 The school may not provide transportation.

3.2.3 The school may not pay entry fees or provide any form of financial assistance.

3.2.4 The school coach may not require his/her athletes to participate in non-school competition or provide instruction to his/her athletes in non-school competition.

3.3 14 *Del. C.*, § 122(b)(15) requires written parental permission prior to participation on a similar team during the designated sport season. Written authorization must be on file in the student's school prior to engaging in a tryout, practice, or contest with a similar team. Consent forms shall be available in all member schools.

3.3.1 Similar teams shall include organized intramural teams as well as non-school teams in that sport.

### 4.0 Passing Work

4.1 In order to be eligible for participation in interscholastic athletics, including practices, a student must pursue a regular course of study or its equivalent as approved

by the local governing body, and must be passing at least five (5) credits. Two (2) of those credits must be in the separate areas of English, Mathematics, Science, or Social Studies.

4.1.1 A student who is receiving special education services and is precluded from meeting the aforementioned academic requirements due to modifications in the grading procedure or course of study, shall be adjudged eligible by the principal if he/she is making satisfactory progress in accordance with the requirements of his/her individualized education plan (IEP).

4.2 In the case of a student in the twelfth grade, he/she must be passing all courses necessary for graduation from high school in order to be eligible for participation. A course necessary for graduation shall be any course, whether taken during or outside the normal school day, that satisfies an unmet graduation requirement.

4.3 A student whose work in any regular marking period does not meet the above standards shall be ineligible to participate in interscholastic athletics, including practices, for the next marking period.

4.3.1 In the case of a conflict between the marking period grade and the final grade, the final grade shall determine eligibility.

4.3.2 The final accumulation of credits shall determine eligibility for the following school year. When a student makes up a failure or earns the required credit(s) during the summer, he/she shall become eligible.

4.3.2.1 Written verification of the successful completion of a correspondence course must be received before a student shall regain his/her eligibility.

4.4 A student forfeits or regains his/her eligibility, in accordance with the provisions of this rule, on the day report cards are issued.

4.5 Local school boards and non-public schools may establish more stringent requirements for academic eligibility than the minimum standards herein prescribed.

### See 3 DE Reg 437 (9/1/99)

4.6 An ineligible student who practices in violation of these rules shall, when he/she regains his/her eligibility, be prohibited from practicing, scrimmaging, or competing for an equivalent number of days.

### 5.0 Participation

5.1 No student shall represent a school in athletics after four (4) consecutive years from the date of his/her first entrance into the ninth grade unless a waiver is granted for hardship reasons.

5.1.1 No student shall have more than four (4) opportunities to participate in a fall sport or combination of fall sports, in a winter sport or combination of winter sports, or in a spring sport or combination of spring sports.

5.1.2 "Hardship" shall be defined as extenuating circumstances which are beyond the control of the student or his/her parent(s) or court appointed legal



guardian(s); preclude him/her from completing the academic requirements for graduation within the normal period of eligibility; and deprive him/her of all or part of one of his/her opportunities to participate in a particular sports season.

5.1.2.1 The circumstances must be unusual, unavoidable, and extraordinary. A clear and direct causal relationship must exist between the alleged hardship condition and the failure of the student to complete the academic requirements for graduation within the normal period of eligibility and the loss of all or part of one of his/her opportunities to participate in a particular sports season.

5.1.2.2 The burden of proof rests with the student in conjunction with the waiver/appeal process as described in 1053 DSSAA Waiver Procedure and 1055 DSSAA Appeal Procedure. Claims of extended illness, debilitating injury, emotional stress, etc., must be accompanied by appropriate documentation. Evidence must be submitted to verify that the student or his/her parent(s) or court appointed legal guardian(s) sought assistance to ameliorate the effects of the hardship condition.

5.1.3 Satisfactory completion of studies in accordance with promotion policies established by the local governing body shall determine when a student is beyond the eighth grade.

5.2 If the eighth grade is part of the same administrative unit as grades 9 through 12, participation on the part of an eighth-grade student toward five (5) years of eligibility shall be at the discretion of the individual school.

5.2.1 Seventh-grade students shall not be permitted to participate on senior high school interscholastic teams.

5.3 Participation shall be defined as taking part in a school sponsored practice (see 25.3), scrimmage, or contest on or after the first allowable date for practice in that sport.

#### 6.0 Postgraduates/Higher Institutions

6.1 Postgraduates shall not be eligible to participate in interscholastic athletics.

6.1.1 All graduates of recognized senior high schools shall be considered postgraduates.

6.2 Students whose commencement exercises are prior to the completion of the school's regular season schedule and/or the state tournament shall be eligible to compete.

6.3 A regularly enrolled student taking courses in an institution of higher education shall be eligible provided he/she meets all other DSSAA requirements.

#### 7.0 Foreign Exchange Students/Foreign Students

7.1 Notwithstanding 1.2, 1.3, and 1.4, foreign students may be eligible to participate in interscholastic athletics upon arrival at their host school provided they have not attained the age of 19 prior to June 15 and are enrolled as participants in a recognized foreign exchange program.

7.1.1 All foreign exchange programs which are included on the Advisory List of International

Educational Travel and Exchange Programs of the Council on Standards for International Educational Travel (CSIET) and are two (2) semesters in length shall be considered as recognized.

7.1.2 Students participating in programs not included on the CSIET list shall be required to present evidence that the program is a bona fide educational exchange program before it shall be considered as recognized.

7.2 Foreign students who are not participating in a foreign exchange program are considered to be transfer students and are ineligible to compete in interscholastic athletics unless they are in compliance with all DSSAA eligibility requirements.

7.3 Once enrolled, foreign exchange and other foreign students must comply with all DSSAA eligibility rules.

7.4 Athletic recruitment of foreign exchange students or other foreign students by a member school or any other entity is prohibited, and any such students recruited shall be adjudged ineligible.

#### 8.0 Examinations

8.1 A student shall not be eligible to practice, scrimmage, or compete in an interscholastic contest unless he/she has been adequately examined by a licensed physician (M.D. or D.O.), a certified nurse practitioner, or a certified physician's assistant on or after June 1 and before beginning such athletic activity for the current school year.

8.1.1 A certificate to that effect, as well as the parent's or court appointed legal guardian's consent, shall be on file with the administrative head of the school prior to the student participating in a practice, scrimmage, or game.

8.2 For any subsequent sports season in the school year, a limited reexamination shall be performed under the following circumstances:

8.2.1 If the athlete has been treated for an injury during the immediately preceding sports season.

8.2.2 If the athlete has been out of school during the preceding term with an illness other than the usual minor upper respiratory or gastrointestinal upset.

8.2.3 If an operation has been performed on the athlete during the preceding term.

8.2.4 If the athlete has a remedial defect.

8.3 The medical history of the student should be available at the time of each examination.

8.4 A player who is properly certified to participate in interscholastic athletics but is physically unable to practice for five (5) consecutive days due to illness or injury, must present to the administrative head of the school a statement from a qualified physician that he/she is again physically able to participate.

#### 9.0 Clarifying Eligibility

9.1 In cases of uncertainty or disagreement, the eligibility of a student shall be determined initially by the

Executive Director. If the Executive Director determines that the student is ineligible, the school and the student shall be notified and the student suspended immediately from participation in interscholastic athletics.

9.2 The school and the student shall be informed that the decision of the Executive Director may be appealed to the DSSAA Board of Directors in accordance with the procedure described in 1055 DSSAA Appeal Procedure.

9.3 Decisions of the DSSAA Board of Directors to affirm, modify, or reverse the eligibility rulings of the Executive Director may be appealed to the State Board of Education in accordance with the procedure described in 1055 DSSAA Appeal Procedure.

#### 10.0 Eligibility Lists

10.1 Member schools shall use eligibility forms approved by the Executive Director.

10.2 A copy of the original eligibility report and subsequent addenda must be either received by the Executive Director or postmarked prior to the first contest for which the students listed are eligible. Failure to file an eligibility report as prescribed shall result in a \$15.00 fine against the school.

10.3 In the case of a student who met all DSSAA eligibility requirements but was omitted from the eligibility report due to administrative or clerical error, he/she shall be adjudged eligible and the school assessed a \$10.00 fine.

#### **See 3 DE Reg 437 (9/1/99)**

#### 11.0 Contracts Interchanged

11.1 Contracts between DSSAA member schools or between DSSAA member schools and full member schools of comparable state associations are encouraged but not required.

11.1.1 Conference master contracts are approved substitutes for individual contracts.

11.1.2 In the case of a dispute and provided either a signed individual contract or conference master contract is in place, appeal may be made to the DSSAA Board of Directors which, after review of the circumstances, may assign an appropriate penalty.

11.1.2.1 Without a signed individual contract or conference master contract, a member school has no right of appeal to the Executive Director or the DSSAA Board of Directors.

11.2 Contracts between DSSAA member schools and non-member or associate member schools of comparable state associations are required.

11.2.1 A copy of the signed contract must be either received by the Executive Director or postmarked prior to the contest for which the agreement was drawn up. Failure to file a signed contract as prescribed shall result in the DSSAA member school being assessed a \$15.00 fine.

11.2.2 In the case of a dispute, a member school has no right of appeal to the Executive Director or the

DSSAA Board of Directors unless a signed individual contract is in place.

11.3 Contracts shall be interchanged according to the following provisions:

11.3.1 Contracts on the accepted form shall be arranged by the competing schools for each season's interscholastic athletic contests.

11.3.2 Contracts shall be drawn up by the faculty manager or other designated staff member of the home school of the earlier varsity contest.

11.3.3 A signed contract or any part thereof may not be nullified or modified except by mutual agreement of both schools involved.

11.4 If a game is not played, it shall be considered "no contest" unless a signed individual contract or conference master contract was in place and one of the participating schools breached the agreement in which case appeal may be made to the Executive Director or the DSSAA Board of Directors.

#### 12.0 Spring Football

12.1 No member school shall participate in spring football games nor shall a member school conduct football practice of any type outside of the regular fall sports season except when participating in the state tournament.

12.2 "Organized football" or "organized football practice" shall be defined as any type of sport which is organized to promote efficiency in any of the various aspects of football. Rugby and touch football featuring blocking, tackling, ball handling, signaling, etc. shall be considered "organized football" and shall be illegal under the intent of this rule.

#### 13.0 Licensed Physician

13.1 Provision shall be made for a licensed physician, a NATA certified athletic trainer, or a registered nurse to be present at all interscholastic football games in which a member school participates. The host school shall provide this service.

#### **See 3 DE Reg 438 (9/1/99)**

13.2 Failure by the host school to provide this service shall result in the school being assessed a \$100.00 fine.

#### 14.0 Use of Ineligible Athlete

14.1 The deliberate or inadvertent use of an ineligible athlete in the sports of soccer, football, volleyball, field hockey, basketball, baseball, softball, and lacrosse shall require the offending school to forfeit the contest(s) in which the ineligible athlete participated.

14.1.1 If the infraction occurs during a tournament, including a state championship, the offending school shall be replaced by its most recently defeated opponent. Teams eliminated prior to the most recently defeated opponent shall not be allowed to reenter the tournament.

14.1.2 Team and/or individual awards shall

be returned to the event sponsor.

14.1.3 Team and/or individual records and performances shall be nullified.

14.1.4 The offending school may appeal to the DSSAA Board of Directors for a waiver of the forfeiture penalty if the ineligible athlete had no tangible effect on the outcome of the contest(s). If the forfeiture penalty is waived, the offending school shall be reprimanded and fined \$200.00 unless the athlete or his/her parent(s) or court appointed legal guardian(s) knowingly withheld information or provided false information that caused him/her to be eligible for interscholastic competition. The burden of proof, in both instances, rests entirely with the offending school.

**See 3 DE Reg 438 (9/1/99)**

14.1.5 A forfeit shall constitute a loss for the offending school and a win for its opponent for purposes of standings and playoff eligibility.

14.1.6 A forfeit shall be automatic and not subject to refusal by the offending school's opponent.

14.2 The deliberate or inadvertent use of an ineligible athlete in the sports of cross country, wrestling, swimming, track, golf, and tennis shall require the offending school to forfeit the matches won and/or points earned by the ineligible athlete or by a relay team of which he/she was a member. The points contributed by an ineligible athlete to his/her team score shall be deleted.

14.2.1 If the infraction occurs during a tournament, including a state championship, the ineligible athlete shall be replaced by his/her most recently defeated opponent or the next highest finisher. Contestants eliminated prior to the most recently defeated opponent shall not be allowed to reenter the tournament.

14.2.2 Individual awards earned by the ineligible athlete and team awards, if necessary because of adjustments in the standings, shall be returned to the event sponsor.

14.2.3 Individual records and performances by the ineligible athlete shall be nullified.

14.3 If an ineligible athlete participates in interscholastic competition contrary to DSSAA rules but in accordance with a temporary restraining order or injunction against his/her school and/or DSSAA, and the injunction is subsequently vacated, stayed, or reversed, or the courts determine that injunctive relief is not or was not justified, or the injunction expires without further judicial determination, the penalties stipulated in 14.1 and 14.2 shall be imposed.

14.4 The intentional use of an ineligible athlete by a member school or repeated indifference to its responsibility to determine the eligibility of its athletes will subject the school to additional penalties which may include suspension for up to 180 school days from the date the charge is substantiated.

14.5 If a coach knowingly withholds information or provides false information that causes an

athlete to be eligible for interscholastic competition, the coach shall be suspended from coaching in any sport at any DSSAA member school for up to 180 school days from the date the charge is substantiated.

14.6 If an athlete or his/her parent(s) or court appointed legal guardian(s) knowingly withholds information or provides false information that causes him/her to be eligible for interscholastic competition, the athlete shall be suspended from participation in any sport at any DSSAA member school for up to 180 school days from the date the charge is substantiated.

**15.0 Reporting Violations**

15.1 If a school violates a provision of the DSSAA Constitution and Bylaws, the administrative head or his/her designee shall notify the Executive Director in writing of the violation.

15.2 If a school uses an ineligible athlete, the administrative head or his/her designee shall notify the opposing school(s) or event sponsor, in the case of a tournament or meet, and the Executive Director in writing of the violation and the forfeiture of the appropriate game(s), match(es), and/or point(s) won.

**16.0 Equivalent Rules**

16.1 A member school shall not participate in a scrimmage or contest with any school that is not a member in good standing of DSSAA or a state association comparable to DSSAA.

16.1.1 A full member school shall not participate in a scrimmage or contest with an associate or non-member school of another state association unless the opposing school, as part of a written contract, certifies that its contestants are eligible under the rules of its home state association.

16.1.1.1 Postgraduate students shall not be allowed to participate.

16.1.2 An associate member school shall not participate in a scrimmage or contest with an associate or non-member school of another state association unless the opposing school complies with the conditions specified in 16.1.1. However, the opposing school shall be exempt from those rules which DSSAA has waived for its associate member school.

16.1.2.1 Postgraduate students shall not be allowed to participate.

16.2 Member schools shall not participate in a practice, scrimmage, or contest with a non-school sponsored team.

16.3 Member schools shall not participate in a practice, scrimmage, or contest with university, college, or junior college undergraduates.

16.4 This rule shall not apply to games played against the alumni or faculty of the school when the game is sponsored by school authorities.

16.5 A school which participates in a game

against an illegal opponent shall be required to forfeit the contest and be assessed a \$100.00 fine.

#### 17.0 Codes

17.1 DSSAA is affiliated with the National Federation of State High School Associations (NFHS). The playing codes, sanctions, and other rules of the NFHS are adopted except as modified by the DSSAA Board of Directors.

17.2 The playing rules of the United States Tennis Association, the United States Golf Association, and the United States Lacrosse Association are adopted for the sports of tennis, golf, and girls' lacrosse respectively except as modified by the DSSAA Board of Directors.

#### 18.0 Conferences

18.1 Member schools may establish voluntary conference organizations according to the following rules:

18.1.1 Any such organization may be composed of public and non-public schools.

18.1.2 Any conference so formed must submit its proposed membership and its constitution and bylaws to the DSSAA Board of Directors and they must be approved before the schools may enter into any contractual agreements.

18.1.2.1 All subsequent amendments to the constitution and bylaws of the conference must be approved by the DSSAA Board of Directors.

#### **See 3 DE Reg 438 (9/1/99)**

#### 19.0 All-Star Contests

19.1 An all-star contest shall be defined as an organized competition in which the participants are selected by the sponsoring organization or its designee on the basis of their performance during the interscholastic season in that sport.

19.2 Students who have completed their eligibility in a sport may participate in one all-star contest in that sport, if approved by DSSAA, prior to graduation from high school.

19.3 Member schools shall not make their facilities, equipment, or uniforms available to the sponsoring organization or the participants unless the all-star contest is approved by DSSAA.

19.4 The all-star contest must be approved by DSSAA in accordance with the following criteria:

19.4.1 The contest shall not be for determining a regional or national champion.

19.4.2 The contest shall be organized, promoted, and conducted by and all profits go to a nonprofit organization. Involvement by a commercial organization shall be limited to providing financial support.

19.4.3 The awards given shall be in compliance with 1.5.

19.4.4 Exceptions to the adopted rules code for the sport shall require the approval of DSSAA.

19.4.5 A full financial report must be filed

with the Executive Director within thirty (30) days of the contest. Failure to submit a financial report within the specified period of time shall result in the sponsoring organization being assessed a \$50.00 fine.

19.4.6 The event organizer shall not accept financial support or sell advertising to companies involved in the production or distribution of alcohol and tobacco products.

#### **See 3 DE Reg 439 (9/1/99)**

19.5 A student who participates in more than one all-star game or in a non-approved all-star game shall forfeit his/her eligibility for 90 school days.

#### 20.0 Sponsoring Interscholastic Teams

##### 20.1 Definition of Interscholastic Athletics

20.1.1 Interscholastic competition is defined as any athletic contest between students representing two (2) or more schools. Students are considered to be representing a school if the school does any of the following:

20.1.1.1 Partially or wholly subsidizes the activity (providing equipment, uniforms, transportation, entry fees, etc.).

20.1.1.2 Controls and administers the funds, regardless of their source, needed to conduct the activity.

20.1.1.3 Permits the students to compete under the name of the school.

20.1.1.4 Publicizes or promotes the activity through announcements, bulletins, or school sponsored publications.

20.1.1.5 Presents or displays individual/team awards.

20.1.2 Members of school clubs who participate in non-competitive, recreational activities or compete unattached are not considered to be engaged in interscholastic competition.

##### 20.2 Sponsorship of Teams

20.2.1 Schools may sponsor teams for interscholastic competition in a sport provided the following criteria are met:

20.2.1.1 The governing body of the participating district or non-public school approves participation in the sport. The administrative head of the school shall notify the Executive Director in writing of the school's intent to sponsor a team in a new sport.

20.2.1.2 The governing body of the participating district or non-public school controls the funds needed to support the proposed team, regardless of their source, in the same manner as existing teams (coaches' salaries, purchase and repair of equipment, medical supervision, transportation, preparation and maintenance of practice and game facilities, awards, etc.). Requests from outside sources to make financial contributions or to donate equipment or services must be submitted in writing and must include an acknowledgment that the equipment becomes the

property of the school. The contribution or donation must be approved in writing by the administrative head of the school.

**See 3 DE Reg 439 (9/1/99)**

20.2.1 The participating schools agree to comply with all applicable DSSAA rules and regulations as stated in the current DSSAA Official Handbook.

**20.3 Levels of Participation**

20.3.1 Level 1 or developmental sport - less than twelve (12) participating schools at the varsity level.

20.3.1.1 All DSSAA rules and regulations shall be in effect except 23.0, 24.0, and 32.0.

20.3.1.2 Schools shall not be permitted to scrimmage or compete against a non-school sponsored team.

20.3.2 Level 2 or recognized sport - twelve (12) or more participating schools at the varsity level.

20.3.2.1 At the time of official recognition, DSSAA shall provide rules publications to the participating schools, designate an approved officials' association, conduct an annual or biannual rules clinic for coaches and officials, establish a maximum game schedule, and form a committee to promote the continued development of the sport and prepare for a future state championship.

20.3.2.2 All DSSAA rules and regulations shall be in effect.

20.3.3 Level 3 or championship sport - sixteen (16) or more participating schools at the varsity level.

20.3.3.1 Upon petition by the sport committee and adoption of a tournament proposal, DSSAA shall establish a state championship.

20.3.4 Withdrawal of level 2 or level 3 status.

20.3.4.1 If, for two (2) consecutive years, less than the required number of schools participate in a sport, DSSAA may withdraw official recognition or suspend the state tournament/meet for a period of time as determined by the Board of Directors.

**21.0 State Championships**

21.1 The minimum number of high schools which must sponsor a sport at the varsity level in order for DSSAA to approve a state championship shall be sixteen (16).

21.2 State championship play shall be permitted in football, basketball, indoor and outdoor track, cross country, swimming, wrestling, golf, baseball, soccer, tennis, field hockey, softball, girls' volleyball, and lacrosse provided such tournament or meet is under the direct control and supervision of and/or has the approval of DSSAA.

21.3 All state championships shall be managed by committees established in accordance with Sections 11. and 12. of Article IV of the DSSAA Constitution.

21.3.1 Each tournament format, as well as the criteria and procedures for selecting and seeding the

participating teams, must be approved by the Board of Directors and any subsequent changes must also be approved by the Board. The Executive Director shall advise the committees as to which proposed changes must be presented to the Board. If the Executive Director and the committee cannot agree, the proposed change must be presented to the DSSAA Board of Directors for approval.

**See 3 DE Reg 439 (9/1/99)**

21.3.2 All financial arrangements, including the collection of monies and expenditures, must be approved by the Executive Director

21.4 Championship play in other sports must be confined to the individual conferences and conducted in accordance with the rules of the conference as approved by the DSSAA Board of Directors.

21.5 No member school shall participate in a post-season contest.

**22.0 Certified Coaches**

22.1 Only those professional employees certified by the Department of Education and whose salary is paid by the State and/or local Board of Education, or in the case of charter and non-public schools by a similar governing body, if acceptable as a coach by the governing body, shall coach, assist in coaching, or direct member school teams in any district.

22.1.1 The terms of employment must be for the regular school year and the professional assignment shall be no less than 1/2 of the school day, exclusive of coaching duties.

**See 3 DE Reg 439 (9/1/99)**

**22.2 Emergency coaches**

22.2.1 An emergency coach shall be defined as an individual who is either not certified by the Department of Education, or is certified by the Department of Education but is not employed for the regular school year or whose professional assignment is less than 1/2 of the school day.

22.2.2 An individual who meets the requirements of a certified coach as specified in 22.1 but whose professional assignment is located in a different school or district than his/her coaching assignment shall not be considered an emergency coach by DSSAA.

22.2.3 Member schools shall be required to annually reopen all positions that are held by emergency coaches.

22.2.4 Emergency coaches may be employed provided the local governing body adheres to the following procedures:

22.2.4.1 The employing Board of Education must attempt to locate an acceptable, certified professional staff member by advertising the coaching vacancy in the district for as many days as are required by the district's collective bargaining agreement.

22.2.4.2 If an acceptable, certified professional staff member is not available, an individual who

is acceptable to the employing Board of Education may be hired as an emergency coach.

22.2.4.3 Any individual employed as a coach under the emergency provision must comply with the following regulations:

22.2.4.3.1 He/she must be officially appointed by the local Board of Education. The superintendent or his/her designee may temporarily appoint an individual if a coaching vacancy arises and the sport season begins during the interim between meetings of the local Board of Education.

**See 3 DE Reg 439 (9/1/99)**

22.2.4.3.2 His/her coaching salary must be paid exclusively by the local Board of Education.

22.3 Students who are practice teaching in a member school shall be permitted to assist in all professional activities during their practice teaching period.

22.4 In addition to the members of the school's regular coaching staff, who must come from 22.1 through 22.3, the local governing body may supplement a school's coaching staff with volunteer coaches. Volunteer coaches are individuals who donate their services to a school and who have been approved by that school's local governing body. A current list of approved volunteer coaches shall be on file in the school's administrative office before any coaching duties are assumed.

22.5 All varsity head coaches (junior varsity if the school does not sponsor a varsity team) shall be required to attend the DSSAA rules clinic for their sport or, if applicable, pass an open book rules examination supplied by the DSSAA office.

22.5.1 A school shall be assessed a \$50.00 fine and the head coach shall be placed on probation if he/she fails to attend the DSSAA rules clinic or pass the open book rules examination in his/her sport. Failure to comply for a second consecutive year shall result in the school being assessed a \$50.00 fine and the coach being suspended for up to five contests as determined by the Executive Director.

22.6 Beginning with the 2000-01 school year, head coaches at all levels of competition shall be required to hold a current certification in adult CPR.

22.6.1 Beginning with the 2001-02 school year, assistant coaches at all levels of competition shall be required to hold a current certification in adult CPR.

**See 3 DE Reg 439 (9/1/99)**

**23.0 Sports Seasons and Practices**

23.1 The regular fall sports season shall begin with the first approved day for practice and end with the start of the state championship in that sport. Any regular season contest that was postponed must be rescheduled and played before the beginning of the state tournament in that sport. Conference championships must also be completed before the start of the state tournament in that sport.

23.2 The regular winter sports season shall

begin with the first approved day for practice and end with the start of the state championship in that sport. Any regular season contest that was postponed must be rescheduled and played before the beginning of the state tournament in that sport. Conference championships must also be completed before the start of the state tournament in that sport.

**See 3 DE Reg 439 (9/1/99)**

23.3 The regular spring sports season shall begin on March 1 and end with the start of the state championship in that sport. Any regular season contest that was postponed must be rescheduled and played before the beginning of the state tournament in that sport. Conference championships must also be completed before the start of the state tournament in that sport.

23.4 Practice for any fall sport shall not begin earlier than 21 days before the first Friday after Labor Day. Practice for any winter sport shall not begin earlier than 21 days before the first Friday in December and practice for any spring sport shall not begin earlier than March 1.

**See 3 DE Reg 439 (9/1/99)**

23.4.1 The first three (3) days of football practice shall be primarily for the purpose of physical conditioning and shall be restricted to non-contact activities. Coaches may introduce offensive formations and defensive alignments, run plays "on air," practice non-contact phases of the kicking game, and teach non-contact positional skills. Protective equipment shall be restricted to helmets, mouthguards, and shoes. The use of dummies, hand shields, and sleds in contact drills is prohibited. Blocking, tackling, and block protection drills which involve any contact between players are also prohibited.

23.5 A school which participates in a game prior to the first allowable date or after the start of the state championship shall be required to forfeit the contest and be assessed a \$100.00 fine.

23.6 A school which conducts practice prior to the first allowable date shall be assessed a fine of \$100.00 per illegal practice day.

23.7 A certified, emergency, or volunteer coach shall not be allowed to provide instruction out of the designated season in his/her assigned sport to returning members of the varsity or subvarsity teams of the school at which he/she coaches. He/she shall also be prohibited from coaching rising ninth graders (rising eighth graders if eighth grade is part of the same administrative unit as grades 9 through 12) who participated in his/her assigned sport at a feeder school.

23.7.1 A coach shall not be allowed to participate on a team in his/her assigned sport with the aforementioned players.

23.7.2 A coach shall also be prohibited from officiating contests in his/her assigned sport if the aforementioned players are participating except in organized league competition.

23.7.2.1 The league shall not be organized and conducted by the employing school, the employing school's booster club, or the employing school's coaching staff.

23.7.2.2 The league shall have written rules and regulations that govern the conduct of contests and establish the duties of contest officials.

23.7.2.3 The league shall have registration/entry procedures, forms, and fees; eligibility requirements; and fixed team rosters, team standings, and a master schedule of contests.

23.8 A certified, emergency, or volunteer coach shall not be allowed to provide instruction during the designated season in his/her assigned sport to current members of the varsity or subvarsity teams of the school at which he/she coaches outside of school sponsored practices, scrimmages, and contests.

23.9 A coach who is determined to be in violation of 23.7 or 23.8 shall be suspended from coaching in the specified sport at any DSSAA member school for up to 180 school days from the date the charge is substantiated.

24.0 Maximum Game Schedules and Designated Sport Season

24.1 The maximum number of regularly scheduled interscholastic contests/competition dates for each team and individual in the recognized sports and their designated season shall be as follows:

24.2 Participation in any part of a quarter/half shall count as a quarter/half toward the weekly and daily limitations in that sport. However, in the case of football, participation on a free kick or a play from a scrimmage kick formation shall not count as a quarter. Overtime periods shall be considered as part of the fourth quarter or second half.

24.3 A week shall be designated as starting on Monday and ending on Sunday for all sports except football. A football week shall begin the day of the varsity game and end the day preceding the next varsity game or the following Friday.

24.4 The preceding game limitations, with the exception of the individual daily limitation, shall not prohibit the rescheduling of postponed games at the discretion and convenience of the member schools involved provided the game was postponed due to inclement weather, unplayable field conditions, failure of the assigned officials to appear for the game, breakdown of the bus or van carrying the visiting

Sport	Team Limitations		Individual Limitations	
	Season	Week	Week	Day
<b>Fall</b>				
Cross Country (boys and girls)	16 competition dates	•+3 competition dates	•+3 competition dates	
Field Hockey (girls)	16 contests	•3 contests	•3 competition dates	2 halves
Football (boys)	10 contests	1 contest	4 varsity quarters or any combination of 5 varsity and subvarsity quarters provided no more than 3 quarters are at the varsity level	
Soccer (boys)	16 contests	•3 contests	•3 competition dates	2 halves
Volleyball (girls)	16 competition dates of which 1 date may involve more than 2 teams	•3 competition dates	•3 competition dates	
<b>Winter</b>				
Basketball (boys and girls)	22 contests	•3 contests	•3 competition dates	4 quarters
Swimming (boys and girls)	*16 contests	•3 competition dates	•3 competition dates	
Indoor Track (boys and girls)	12 contests	•+ 3 contests	•+3 contests	
Wrestling (boys)	*18 contests	•3 competition dates	•3 competition dates	5 matches
<b>Spring</b>				
Baseball (boys)	18 contests	•3 contests	•3 contests	
Softball (girls)	18 contests	•3 contests	•3 contests	
Golf (boys)	16 competition dates	•3 competition dates	•3 competition dates	
Tennis (boys and girls)	16 contests	•3 contests	•3 contests	
Outdoor Track (boys and girls)	18 competition dates	•+3 competition dates	•+3 competition dates	
Lacrosse (boys and girls)	16 contests	•3 contests	•3 competition dates	4 quarters (boys) or 2 halves (girls)
Soccer (girls)	16 contests	•3 contests	•3 competition dates	2 halves

• *The third contest/competition date in a week must be held on Friday (no early dismissal permitted), Saturday or Sunday. This requirement is waived when a school is not in session for the entire week such as during winter or spring vacation.*

+ A team may not participate in two different cross country, indoor track or outdoor track meets on the same day.

\* Participation in a triangular meet shall count as two contests and participation in a quadrangular meet shall count as three contests toward the seasonal limitation.

team, or any other circumstances beyond the control of site management which preclude playing the game. However, a team may not participate in more than four (4) contests/competition dates in a week.

24.5 The maximum number of regularly scheduled contests for each of the recognized sports, except football, shall be exclusive of conference championships, playoffs to determine tournament state berths, and the state tournament/meet. The maximum number of regularly scheduled football contests shall be exclusive of the state tournament.

24.5.1 Any playoffs to determine state tournament berths shall be under the control and supervision of the DSSAA tournament committee.

24.6 A school which participates in more than the allowable number of contests in a season shall be suspended from the state playoffs or, if a non-qualifying team, fined \$200.00.

24.7 A school which exceeds the weekly contest limitation shall be required to forfeit the contest and be assessed a \$100.00 fine.

24.8 A student who exceeds the weekly or daily contest limitation shall be considered an ineligible athlete and the school subject to the penalties stipulated in 14.0.

#### 25.0 Practice Sessions

25.1 Member schools shall conduct a minimum of three (3) weeks of practice under the supervision of the school's coaching staff prior to the first scheduled contest in all sports.

25.1.1 The intent of this regulation is for each school to conduct regular daily practice during the aforementioned 21-day period, provided weather conditions and other safety related factors permit, without being required to practice on holidays and weekends. Practicing on holidays and weekends shall be left to the discretion of the individual schools and conferences.

25.2 A student shall be required to practice for a period of at least seven (7) calendar days prior to participating in a contest. However, if a student has been participating in a state tournament during the preceding sports season and is unable to begin practicing at least seven (7) calendar days before his/her team's first contest, he/she shall be exempt from this requirement.

25.3 A practice session shall be defined as any instructional activity on the field, court, mat, or track or in the pool, weight room, or classroom such as team meetings, film reviews, blackboard sessions, warmup and cool down exercises, drills, mandatory strength training, etc.

25.3.1 All activities shall be under the supervision of a certified, emergency, or approved volunteer coach.

25.4 Practice sessions shall be limited to two (2) hours on official school days.

25.4.1 Split sessions may be conducted but practice time shall not exceed two hours for any individual athlete.

25.4.2 The two-hour practice limitation does not include time for non-instructional activities such as dressing, showering, transportation, or training room care.

25.5 A school which deliberately exceeds the two-hour practice limitation shall be assessed a \$100.00 fine.

#### 26.0 Awards

26.1 A member school and/or support group affiliated with a member school, such as an alumni association or booster club, shall be allowed to present recognition awards for team and/or individual accomplishments.

26.1.1 The awards, including artwork and lettering, shall require the approval of the administrative head of the school and their value shall be mostly symbolic.

26.1.2 Permissible awards include trophies, plaques, medals, letters, certificates, photographs, and similar items. Jackets, sweaters, shirts, watches, rings, charms, and similar items if properly inscribed (reference to the team or individual athletic accomplishment) are also acceptable.

26.1.3 Member schools and such support groups shall also be permitted to sponsor team banquets and present post-secondary scholarships.

26.2 A non-profit group such as a coaches association, booster club not affiliated with a member school, or community service organization shall be allowed to present recognition awards for team and/or individual accomplishments with the approval of the administrative head of the school.

26.2.1 With the exception of post-secondary scholarships, the awards shall have symbolic value only. Awards that have utilitarian value are prohibited.

26.2.2 Non-profit groups shall also be permitted to sponsor team banquets.

26.3 Non-profit organizations co-sponsoring a tournament shall be allowed to give post-secondary scholarships to participating schools provided they are not awarded on the basis of team or individual performance. Scholarship monies shall be administered in accordance with DSSAA and NCAA regulations.



**See 3 DE Reg 440 (9/1/99)**

26.4 Commercial organizations shall be allowed to present recognition awards for team and/or individual accomplishments with the approval of the administrative head of the school.

26.4.1 With the exception of post-secondary scholarships, the awards shall have symbolic value only. Awards with utilitarian value are prohibited. The value of the award shall not exceed \$50.00.

**See 3 DE Reg 440 (9/1/99)**

26.5 Non-symbolic competition awards, regardless of sponsor, shall have a utilitarian value not to exceed \$50.00 per recipient and shall require the prior approval of the Executive Director.

**27.0 Boxing**

Member schools shall not participate in interscholastic boxing.

**28.0 Protests and Complaints**

All protests and complaints brought before DSSAA shall be in writing and shall be acted on only after the administrative head of the school involved has been given an opportunity to appear before the Board of Directors.

**29.0 Wrestling Weight Control Code**

29.1 Each year, prior to January 15, a wrestler must establish his/her minimum weight class at a weigh-in witnessed by and attested to in writing by the athletic director or a designated staff member (excluding coaches) of the school the wrestler attends. Thereafter, a wrestler may not compete in a weight class below his/her duly established weight class. In addition, a wrestler may not compete in the individual state championship or a qualifying tournament in his/her duly established weight class unless the wrestler makes weight in at least fifty (50) percent of his/her conference and non-conference weigh-ins during the regular season.

29.1.1 A wrestler who weighs in at least once but fails to establish his/her minimum weight class prior to January 15 shall automatically be certified at the weight he/she last weighed in before that date.

29.1.2 A wrestler who does not weigh in at least once and fails to establish his/her minimum weight class prior to January 15 shall automatically be certified at the weight he/she first weighs in after that date.

29.1.3 A wrestler who is unable, prior to January 15, to get down to the maximum allowable weight of 275 pounds in order to compete in the heavyweight class shall be permitted to certify his/her minimum weight class at a later date in the season and thereafter be eligible to participate.

29.2 By January 15, a certified team roster listing the established minimum weight class of each wrestler shall be sent to the secretary of the conference to which the school belongs or to the secretary of the independent tournament. Further, duly attested notices of

additions to the certified roster shall be sent to the conference secretary without delay.

29.2.1 The conference secretary shall in turn send to each school in his/her conference copies of the certified rosters of each school. Further, he/she shall note and send copies of the notices of additions to the rosters as these additions occur.

29.3 Violation of this code on the part of any coach shall be considered evidence of unethical conduct as shall other attempts to circumvent its intent which is to prevent harmful weight reduction.

**30.0 Use of Officials**

30.1 Member schools and tournament sponsors shall be required to use officials approved by DSSAA for interscholastic contests.

30.1.1 In the case of emergencies such as an act of God, refusal by an association to work games, or a shortage of qualified officials, schools which desire to use other than approved officials must obtain permission from the Executive Director.

30.2 Officials shall be required each year to attend the DSSAA rules interpretation clinic and pass the rules examination provided by the DSSAA office for the sport(s) they officiate.

30.2.1 Failure on the part of an official to attend the DSSAA rules interpretation clinic and pass the rules examination shall cause the official to be placed on probation and to lose his/her eligibility to officiate a state tournament contest until both requirements have been satisfied in the same season.

30.2.2 Failure to fulfill this obligation within one (1) year shall cause the official to lose varsity officiating status. Failure to fulfill this obligation in subsequent years shall cause the official to continue to be restricted to subvarsity contests until both requirements have been satisfied in the same season.

30.2.3 Attending the fall soccer rules interpretation clinic shall satisfy the clinic attendance requirement for both the boys' and girls' soccer seasons. Attending the spring soccer rules interpretation clinic shall satisfy the clinic attendance requirement for only the girls' soccer season.

30.2.4 If, for a legitimate reason which is documented by the president of his/her association, an official is unable to attend the DSSAA rules interpretation clinic, he/she may attend a clinic conducted by another NFHS member state association provided the following procedures are observed:

30.2.4.1 No later than the day of the DSSAA rules interpretation clinic, the president of the association notifies the Executive Director, in writing, of the official's inability to attend the clinic.

30.2.4.2 The out-of-state clinic is conducted by an individual either trained by the NFHS or

designated as a clinician by the state's athletic association.

30.2.4.3 The official arranges for a letter to be sent to the Executive Director from the state's athletic association office verifying his/her attendance at the clinic.

30.3 Use of non-approved officials without permission from the Executive Director shall result in the school or tournament sponsor being assessed a \$50.00 fine.

#### 31.0 Summer Camp and Clinic Sponsorship

31.1 DSSAA does not restrict a student's decision to attend a summer athletic camp. However, schools, school organizations, coaches, or school related groups, such as booster clubs, may not sponsor an athletic camp which limits membership to their own district, locale, or teams. Coaches employed by a summer athletic camp may not instruct their own athletes.

31.2 School related groups, such as booster clubs, which desire to sponsor the attendance of their school's enrolled students at summer athletic camps, may do so with the approval of the local school board or governing body. The disbursement of funds to pay for camp related expenses (fees, travel costs, etc.) shall be administered by the principal or his/her designee and the funds shall be allocated according to the following guidelines:

31.2.1 All students and team members shall be notified of the available sponsorship by announcement, publication, etc.

31.2.2 All applicants shall share equally in the funds provided.

31.2.3 All applicants shall be academically eligible to participate in interscholastic athletics.

31.2.4 All applicants shall have one year of prior participation in the sport for which the camp is intended or, absent any prior participation, he/she shall be judged by the coach to benefit substantially from participation in the camp.

#### 32.0 Sanctions - School Team Competition

32.1 Member schools may participate in tournaments/meets involving four (4) or more schools only if the event has been sanctioned by DSSAA and, if applicable, by the NFHS. Tournaments/meets shall be sanctioned in accordance with the following criteria:

32.1.1 The event shall not be for determining a regional or national champion.

32.1.2 The event shall be organized, promoted, and conducted by and all profits go to a nonprofit organization. Involvement by a commercial organization shall be limited to providing financial support.

32.1.3 Nonsymbolic competition awards shall have a value of not more than \$50.00 per recipient and shall require the prior approval of the Executive Director.

32.1.4 Non-school event organizers shall submit a full financial report to the DSSAA office within ninety (90) calendar days of the completion of the event.

32.1.5 The event organizer shall submit a list

of out-of-state schools which have been invited to participate and such schools shall be subject to approval by the Executive Director.

32.1.6 Out-of-state schools which are not members of their state athletic association shall verify in writing that their participating athletes are in compliance with their state athletic association's eligibility rules and regulations.

32.1.7 The event organizer shall not accept financial support or sell advertising to companies involved in the production or distribution of alcohol and tobacco products.

32.1.8 The event organizer shall comply with all applicable NFHS sanctioning requirements.

#### See 3 DE Reg 525 (10/1/99)

32.2 Participation in a non-sanctioned event shall result in the offending school being assessed a \$25.00 fine. A second offense shall result in a \$50.00 fine and loss of eligibility to participate in sanctioned events for the remainder of the sport season. A third offense shall result in a \$100.00 fine and loss of eligibility to participate in sanctioned events for the remainder of the school year.

#### 33.0 Coed Teams

33.1 If a school sponsors a boys' team and a girls' team in a particular sport, boys shall participate on the boys' team and girls shall participate on the girls' team even if the teams compete during different seasons.

33.1.1 A student shall participate in a particular sport for only one season during each academic year.

33.2 If a school sponsors only a boys' team in a particular sport, girls shall be permitted to participate on the boys' team.

33.2.1 Coed teams shall participate only in the boys' state championship tournament/meet.

33.3 If a school sponsors only a girls' team in a particular sport, boys shall not be permitted to participate on the girls' team.

#### 34.0 Non-School Instructional Camps and Clinics

34.1 A student may participate in a commercial camp or clinic, including private lessons, both during and out of the designated sport season provided the following conditions are observed:

34.1.1 The student must participate unattached and may not wear school uniforms or use school equipment.

34.1.2 The school may not provide transportation or pay fees.

34.1.3 The school coach may not require his/her athletes to participate in a camp or clinic or provide instruction to his/her returning athletes in a camp or clinic.

#### 35.0 Open Gym Programs

35.1 A member school may open its gymnasium or other facility for informal, recreational

activities in accordance with the following provisions:

35.1.1 The open gym must be available to all interested students, must not be restricted to members of a particular team, and must be publicized as such.

35.1.2 Student participation must be voluntary and the open gym must not be a prerequisite for trying out for a particular team.

35.1.3 The activities must be unstructured and student-generated. Organized drills in the skills or techniques of a particular sport are prohibited. Organized competition with fixed team rosters is also prohibited.

35.1.3.1 A coach may not predetermine that the open gym will include only his/her sport and publicize the open gym as being restricted to that sport. It is the responsibility of the adult supervisor to permit as many different activities as the facility can effectively and safely accommodate.

**See 3 DE Reg 440 (9/1/99)**

35.1.4 A coach may open the facility and distribute playing equipment but may not instruct, officiate, participate, organize the activities, or choose teams in his/her assigned sport.

35.1.5 Playing equipment is restricted to that which is customarily used in a contest in a particular sport. Playing equipment which is only used in a practice session is prohibited.

35.1.6 The participants must provide their own workout clothing.

**36.0 Conditioning Programs**

36.1 A member school may conduct a conditioning program in accordance with the following provisions:

36.1.1 The conditioning program must be available to all interested students, must not be restricted to members of a particular team, and must be publicized as such.

36.1.2 Student participation must be voluntary. The conditioning program must not be a prerequisite for trying out for a particular team.

36.1.3 Permissible activities include stretching, lifting weights, jumping rope, running, calisthenics, aerobics, and similar generic conditioning activities. Organized drills in the skills or techniques of a particular sport are prohibited.

36.1.4 A coach may not provide instruction in sport specific skills or techniques.

36.1.5 Sport specific equipment is prohibited.

36.1.6 The participants must provide their own workout clothing.

**37.0 Non-Payment of Fines**

A school which does not pay, by July 1, all fines incurred during the school year shall be ineligible to participate in a state championship event in any sport during

the following school year until such time as all fines are paid.

**38.0 Additional Penalties**

Additional penalties may be imposed by the Executive Director or the DSSAA Board of Directors for repeat offenses or as deemed necessary to ensure the proper conduct of interscholastic competition.

**1052. DSSAA Junior High/Middle School Interscholastic Athletics**

**1.0 Eligibility**

No student shall represent a school in an interscholastic scrimmage or contest if he/she does not meet the following requirements:

**1.1 Age**

1.1.1 Eighth-grade students who become 15 years of age on or after June 15 in a school terminating in the eighth grade shall be eligible for all sports during the current school year provided all other eligibility requirements are met.

1.1.1.1 Permission shall be granted for 15-year old eighth-grade students in a school terminating in the eighth grade who are ineligible for junior high/middle school competition to participate in the district high school athletic program provided they meet all other eligibility requirements.

1.1.2 In determining the age of a contestant, the birth date as entered on the birth record of the Bureau of Vital Statistics shall be required and shall be so certified on all eligibility lists.

1.1.3 Requests for waiver of the age requirement shall be considered only for participation on an unofficial, non-scoring basis in non-contact sports.

**1.2 Enrollment and Attendance**

1.2.1 A student must be legally enrolled in the junior high/middle school which he/ she represents and must be in regular attendance by September 20.

1.2.1.1 A student who enters school after September 20 shall not be eligible to participate until February 1.

1.2.1.2 A student who enters school after February 1 shall not be eligible to participate during the remainder of the school year.

1.2.2 A student who is participating in the Delaware School Choice Program, as authorized by 14 *Del. C.*, Ch. 4, is obligated to attend the "choice school" for a minimum of two (2) years unless the student's custodial parent(s) or legal guardian(s) relocate to a different school district or the student fails to meet the academic requirements of the "choice school". If a student attends a "choice school" for less than two (2) years and subsequently returns to his/her home school, the student must receive a release from the "choice district" in order to legally enroll at his/her home school. Without a release, the student would

not be eligible to participate in interscholastic athletics (see 1.4.9).

1.2.3 A student may not participate in a practice, scrimmage, or contest during the time a suspension, either in-school or out-of-school, is in effect or during the time he/she is assigned to an alternative school for disciplinary reasons.

1.2.4 A student must be legally in attendance at school in order to participate in a practice, scrimmage, or contest except when excused by proper school authorities.

1.2.4.1 A student who is not legally in attendance at school due to illness or injury shall not be permitted to participate in a practice, scrimmage, or contest on that day.

1.2.5 An ineligible student who practices in violation of these rules shall, when he/she regains his/her eligibility, be prohibited from practicing, scrimmaging, or competing for an equivalent number of days.

1.2.6 Failure to complete a semester or absence for one or more semesters for reasons other than personal illness shall disqualify a student for ninety (90) school days from the date of reentry to school.

### 1.3 Residence

1.3.1 A student must be living with his/her custodial parent(s) or court appointed legal guardian(s) in the attendance zone of the school which he/she attends in order to be eligible for interscholastic athletics in that school. In cases of joint custody, the custodial parent shall be the parent with actual physical placement as determined by court action.

1.3.1.1 Maintaining multiple residences in order to circumvent this requirement shall render the student ineligible.

1.3.1.2 A student who, under authority of a policy of the local board of education, remains in a school he/she has been attending after his/her legal residence changes to the attendance zone of a different school in the same school district, may exercise, prior to the first official student day of the subsequent academic year, a one time election to remain at his/her current school and thereby not lose athletic eligibility.

1.3.1.2.1 However, if a student chooses to remain at his/her current school and subsequently transfers to the school in his/her new attendance zone on or after the first official student day of the subsequent academic year, he/she shall be ineligible for ninety (90) school days.

1.3.1.3 If a student changes residence to a different attendance zone after the start of the last marking period and is granted permission to continue attending his/her present school via established district policy for such, the student shall retain his/her athletic eligibility in that school for the remainder of the school year provided all other eligibility requirements are met.

1.3.1.4 A student may be residing outside of the attendance zone of the school which he/she attends if the student is participating in the Delaware School Choice Program as authorized by 14 *Del. C.*, Ch. 4.

1.3.1.5 A student who is a non-resident of Delaware shall be eligible at a public or charter school if, in accordance with 14 *Del. C.*, § 607, his/her custodial parent or court appointed legal guardian is a full-time employee of that district.

### 1.4 Transfer

1.4.1 A student who has not previously participated in interscholastic athletics (previous participation is defined as having practiced, scrimmaged or competed in grades 6 through 8), is released by a proper school authority from a sending school, has completed the registration process at the receiving school, and is pursuing an approved course of study shall be eligible immediately upon registration provided he/she meets all other DSSAA eligibility requirements.

1.4.2 If a student has previously participated in interscholastic athletics, he/she shall be ineligible for a period of ninety (90) school days commencing with the first day of official attendance in the receiving school unless one of the following exceptions applies:

1.4.2.1 The transfer is caused by court action, court action being an order from a court of law affecting legally committed students.

1.4.2.1.1 In the case of a transfer of guardianship/custody, the transfer shall be the result of a court order signed by a judge, commissioner, or master of a court of competent jurisdiction. A petition for the transfer of guardianship/custody, an affidavit, or a notarized statement signed by the affected parties shall not be sufficient to render the student eligible to participate in interscholastic athletics.

1.4.2.2 The transfer is the result of a change in residence by the custodial parent(s) or court appointed legal guardian(s) from the attendance zone of the sending school to the attendance zone of the receiving school. A change in residence has occurred when all occupancy of the previous residence has ended.

1.4.3 A student who transfers from a public, private, charter or choice school to another public, private, charter, or choice school, except as prohibited by 1.4.7.1, shall be eligible in the receiving school immediately when the custodial parent(s) or court appointed legal guardian(s) has established a new legal residence in another public school attendance zone different from the one in which the custodial parent(s) or court appointed legal guardian(s) resided for attendance in the sending school. In the case of a transfer to a public school, the new legal residence must be in the attendance zone of the receiving school.

1.4.4 If a waiver of the ninety (90) school-day ineligibility clause is requested, the parent(s) or court

appointed legal guardian(s) is responsible for providing documentation to the DSSAA Board of Directors to support the request. Documentation should include the following for each specific request:

1.4.4.1 Program of study (a multi-year hierarchical sequence of courses with a common theme or subject matter leading to a specific outcome).

1.4.4.1.1 Student schedule card.

1.4.4.1.2 Student transcript.

1.4.4.1.3 Current course descriptions from both the sending and receiving schools.

1.4.4.1.4 Statement from the principal of the sending school indicating that a significant part of the student's desired program of study will not be offered and that it will place the student at a definite disadvantage to delay transfer until the end of the current school year.

1.4.4.1.5 Statement from the principal of both the sending and receiving school that the student is not transferring primarily for athletic advantage as described in 1.4.6.1 through 1.4.6.4.

1.4.4.2 Finances

1.4.4.2.1 Proof of extreme financial hardship caused by significant loss of income and/or increased expenses.

1.4.4.2.2 Statement from the principal of both the sending and receiving schools that the student is not transferring primarily for athletic advantage as defined in 1.4.6.1 through 1.4.6.4.

1.4.5 No waiver shall be required for students who transfer after the close of the sending school's academic year and prior to the first official student day of the receiving school's academic year provided:

1.4.5.1 The student has completed the registration process at the receiving school prior to the first official student day of the academic year. The first official student day shall be defined as the first day on which students in any grade in that school are required to be in attendance.

1.4.5.2 The student has not attended class, excluding summer school, or participated in a practice, scrimmage, or contest at the sending school since the close of the previous academic year.

1.4.5.3 The student's legal residence is located in the attendance zone of the receiving school.

1.4.5.4 All other DSSAA eligibility requirements have been met.

1.4.6 In cases of joint custody when a primary residence is established, a change in a student's primary residence without court action subjects the student to the ninety (90) school-day ineligibility clause.

1.4.7 A change of custody or guardianship for athletic advantage shall render a student ineligible under the ninety (90) school-day ineligibility clause if the primary

reason for his/her transfer is one of the following:

1.4.7.1 To seek a superior team.

1.4.7.2 To seek a team more compatible with his/her abilities.

1.4.7.3 Dissatisfaction with the philosophy, policies, methods, or actions of a coach or administrator pertaining to interscholastic athletics.

1.4.7.4 To avoid disciplinary action imposed by the sending school related to or affecting interscholastic athletic participation.

1.4.8 If a student transfers at any time during the school year for reasons other than those specified in 1.4.2, the student shall be ineligible for a period of ninety (90) school days commencing with the first day of official attendance in the receiving school except as permitted by 1.4.1.

1.4.8.1 If a student transfers with fewer than ninety (90) school days left in the academic year, he/she shall be ineligible for the remainder of the school year but shall be eligible beginning with the subsequent fall sports season provided he/she is in compliance with all other eligibility requirements.

1.4.9 A student who transfers from a public, private, or charter school to a school of choice shall be eligible immediately provided the transfer occurs after the close of the sending school's academic year and prior to the first official student day of the receiving school's academic year and the student satisfies the conditions stipulated in 1.4.5.1, 1.4.5.2, and 1.4.5.4.

1.4.9.1 A student who transfers from a school of choice to another school of choice shall be ineligible to participate in interscholastic athletics during his/her first year of attendance at the receiving school unless the receiving school sponsors a sport(s) not sponsored by the sending school in which case the student shall be eligible to participate in that sport(s) only.

1.4.10 A student who transfers from a school of choice to a public, private, or charter school shall be eligible immediately provided the transfer occurs after the close of the sending school's academic year and prior to the first official student day of the receiving school's academic year and the student satisfies the conditions stipulated in 1.4.5.1 through 1.4.5.4.

1.5 Amateur

1.5.1 A student may not participate in an interscholastic sport unless he/she is considered an amateur in that sport. A student forfeits his/her amateur status if he/she does any of the following:

1.5.1.1 Knowingly plays on or against a professional team. This rule does not apply to an athlete who participates in summer baseball or other sports outside of the school's sports season in which he/she does not receive any form of remuneration for athletic services.

1.5.1.2 Signs a professional contract,

accepts reimbursement for expenses to attend a professional tryout, or receives financial assistance in any form from a professional sports organization.

1.5.1.3 Enters competition under an assumed name. The surname and given name used by any player in the first game of interscholastic competition shall be used during the remainder of the student's interscholastic career. Any change in spelling or use of another name shall be regarded as an attempt to evade this rule unless the change has been properly certified by the player to the principal of the school.

1.5.1.3.1 In the event a false name is used without the knowledge and consent of the player, or if the player has participated in a game without having his/her name appear in the box score, or if his/her name appears in the box score of a game in which he/she did not play, it becomes the sole obligation of the player involved to report the error or omission to the principal of the school within 48 hours from the time such game was played.

1.5.1.4 Receives remuneration of any kind or accepts reimbursement for expenses in excess of the actual and necessary costs of transportation, meals, and lodging for participating in a team or individual competition or an instructional camp/clinic. Reimbursement for the aforementioned expenses is permitted only if all of the participants receive the same benefit.

1.5.1.5 Receives cash or a cash equivalent (savings bond, certificate of deposit, etc.), merchandise or a merchandise discount (except for discount arranged by school for part of team uniform) a reduction or waiver of fees, a gift certificate, or other valuable consideration as a result of his/her participation in an organized competition or instructional camp/clinic.

1.5.1.5.1 Accepting an event program and/or a complimentary item(s) (t-shirt, hat, equipment bag, etc.) that is inscribed with a reference to the event, has an aggregate value of no more than \$50.00, and is provided to all of the participants, shall not jeopardize his/her amateur status.

1.5.1.6 Sells or pawns awards received.

1.5.1.7 Uses his/her athletic status to promote or endorse a commercial product or service in a newsprint, radio, or television advertisement or personal appearance.

1.5.1.8 Receives an award prohibited by DSSAA for being a member of some athletic organization.

1.5.2 Accepting compensation for teaching lessons, coaching, or officiating shall not jeopardize his/her amateur status.

1.5.3 A student who forfeits his/her amateur status under the provisions of this rule is ineligible to participate at the interscholastic level in the sport in which the violation occurred. He/she may be reinstated after a period of up to 180 school days provided that during the

suspension, he/she complies with all of the provisions of this rule. The suspension shall date from the time of the last offense.

## 2.0 Use of Influence for Athletic Purposes

2.1 The use of influence by a person(s) employed by or representing a member school including members of alumni associations, booster groups, and similar organizations to persuade, induce, or facilitate the enrollment of a student in that school for athletic purposes shall render the student ineligible for up to 180 school days from the date the charge is substantiated. In addition, the offending school shall be placed on probation, as determined by the DSSAA Board of Directors, and the offending employee, if a coach, shall be suspended for up to 180 school days from the date the charge is substantiated.

2.2 The use of influence for athletic purposes shall include, but not be limited to, the following:

2.2.1 Offer of money, room, board, clothing, transportation, or other valuable consideration to a prospective athlete or his/her parent(s) or court appointed legal guardian(s).

2.2.2 Offer of waiver/reduction of tuition or financial aid if based, even partially, on athletic considerations.

2.2.3 Preference in job assignments or offer of compensation for work performed in excess of what is customarily paid for such services.

2.2.4 Offer of special privileges not accorded to other students.

2.2.5 Offer of financial assistance including free or reduced rent, payment of moving expenses, etc., to induce a prospective athlete or his/her parent(s) or court appointed legal guardian(s) to change residence.

2.3 A school employee or Board approved volunteer may not initiate contact or request that a booster club member, alumnus, or player initiate contact with a student enrolled in another school or his/her parent(s) or court appointed legal guardian(s) in order to persuade the student to enroll in a particular school for athletic purposes. Illegal contact shall include, but not be limited to, letters, questionnaires or brochures, telephone calls, and home visits or personal contact at athletic contests.

2.3.1 If a coach or athletic director is contacted by a prospective athlete or his/her parent(s) or court appointed legal guardian(s), the former must refer the individual(s) to the principal or school personnel responsible for admissions.

2.3.2 A school employee or Board approved volunteer may discuss the athletic program with a prospective student or his/her parent(s) or court appointed legal guardian(s) during an open house or approved visit initiated by the parent(s) or court appointed legal guardian(s).

2.3.2.1 A school employee or Board

approved volunteer may provide information concerning sports offered, facilities, conference affiliation, and general athletic policies. However, he/she is not permitted to state or imply in any way that his/her athletic program is superior to that of another school or that it would be more beneficial or advantageous for the prospective student to participate in athletics at his/her school.

2.4 If the number of applicants under the Delaware School Choice Program exceeds the number of available student openings, the selection criteria established by the district shall not include athletic considerations.

## 3.0 Non-school Competition

3.1 A student may participate on a non-school team or in a non-school individual event both during and out of the designated sport season. However, the student owes his/her primary loyalty and allegiance to the school team of which he/she is a member. A school shall have the authority to require attendance at practices and contests and students not in compliance shall be subject to disciplinary action as determined by the school.

3.2 Participation on a non-school team or in a non-school individual event shall be subject to the following conditions:

3.2.1 With the exception of organized intramurals, the student may not wear school uniforms or use school equipment.

3.2.2 The school may not provide transportation.

3.2.3 The school may not pay entry fees or provide any form of financial assistance.

3.2.4 The school coach may not require his/her athletes to participate in non-school competition or provide instruction to his/her athletes in non-school competition.

3.3 14 Del. C., § 122 (15) requires written parental permission prior to participation on a similar team during the designated sport season. Written authorization must be on file in the student's school prior to engaging in a tryout, practice, or contest with a similar team. Consent forms shall be available in all member schools.

3.3.1 Similar teams shall include organized intramural teams as well as non-school teams in that sport.

## 4.0 Passing Work

4.1 In order to be eligible for participation in interscholastic athletics, including practices, a student must pursue a regular course of study or its equivalent as approved by the local governing body, and must be passing at least four (4) credits. Two (2) of those credits must be in the separate areas of English, Mathematics, Science, or Social Studies.

4.1.1 A student who is receiving special education services and is precluded from meeting the aforementioned academic requirements due to modifications in the grading procedure or course of study, shall be

adjudged eligible by the principal if he/she is making satisfactory progress in accordance with the requirements of his/her individualized education plan (IEP).

4.2 A student whose work in any regular marking period does not meet the above standards shall be ineligible to participate in interscholastic athletics, including practices, for the next marking period.

4.2.1 In the case of a conflict between the marking period grade and the final grade, the final grade shall determine eligibility.

4.2.2 The final accumulation of credits shall determine eligibility for the following school year. When a student makes up a failure or earns the required credit(s) during the summer, he/she shall become eligible.

4.2.2.1 Written verification of the successful completion of a correspondence course must be received before a student shall regain his/her eligibility.

4.3 A student forfeits or regains his/her eligibility, in accordance with the provisions of this rule, on the day report cards are issued.

4.4 Local school boards and non-public schools may establish more stringent requirements for academic eligibility than the minimum standards herein prescribed.

4.5 An ineligible student who practices in violation of these rules shall, when he/she regains his/her eligibility, be prohibited from practicing, scrimmaging, or competing for an equivalent number of days.

## 5.0 Participation

5.1 **[For the school year 2000-2001 through 2002-2003:]**

**[5.1.1] No student shall represent a school in athletics after six (6) consecutive semesters from the date of his/her first entrance into the seventh grade in schools with grades 7 through 8, inclusive.**

**5.1.2 No student shall represent a school in athletics after eight (8) consecutive semesters from the date of his/her first entrance into the sixth grade in schools with grades 6 through 8, inclusive.**

**5.1.2.1 Participation on the part of a sixth grade student shall be at the discretion of the individual school.**

**5.1.2.2 Sixth-grade students shall not be permitted to participate in football unless the conference develops a classification system that is approved by the DSSAA Board of Directors.]**

**[5.2 Beginning with the school year 2003-2004 and thereafter:]**

**[5.2.1 ~~5.4~~] No student shall represent a school in athletics after four (4) consecutive semesters from the date of his/her first entrance into the seventh grade in schools which restrict participation in interscholastic athletics to students in grades 7 and 8 unless a waiver is granted for hardship reasons.**

**[5.2.1.1 ~~5.1.1~~]** No student shall have more than two (2) opportunities to participate in a fall sport or combination of fall sports, in a winter sport or combination of winter sports, or [in] a spring sport or combination of spring sports.

**[5.2.1.2 ~~5.1.2~~]** "Hardship" shall be defined as extenuating circumstances which are beyond the control of the student or his/her parent(s) or court appointed legal guardian(s) [; ~~†~~] preclude him/her from completing the academic requirements for promotion within the normal period of eligibility; and deprive him/her of all or part of one of his/her opportunities to participate in a particular sports season.

**[5.2.1.2.1 ~~5.1.2.1~~]** The circumstances must be unusual, unavoidable, and extraordinary. A clear and direct causal relationship must exist between the alleged hardship condition and the failure of the student to complete the academic requirements for promotion within the normal period of eligibility and the loss of all or part of one of his/her opportunities to participate in a particular sports season.

**[5.2.1.2.2 ~~5.1.2.2~~]** The burden of proof rests with the student in conjunction with the waiver/appeal process as described in 1053 DSSAA Waiver Procedure and 1055 DSSAA Appeal Procedure. Claims of extended illness, debilitating injury, emotional stress, etc., must be accompanied by appropriate documentation. Evidence must be submitted to verify that the student or his/her parent(s) or court appointed legal guardian(s) sought assistance to ameliorate the effects of the hardship condition.

**[5.2.2 ~~5.2~~]** No student shall represent a school in athletics after six (6) consecutive semesters from the date of his/her first entrance into the sixth grade in schools which permit students in grades 6, 7 and 8 to participate in interscholastic athletics unless a waiver is granted for hardship reasons as specified in **[5.2.1.2 ~~5.1.2~~]**.

**[5.2.2.1 ~~5.2.1~~]** No student shall have more than three (3) opportunities to participate in a fall sport or combination of fall sports, in a winter sport or combination of winter sports, or [in] a spring sport or combination of spring sports.

**[5.2.2.2 ~~5.2.1~~]** Participation on the part of a sixth-grade student shall be at the discretion of the individual school.

**[5.2.2.3 ~~5.2.2~~]** Sixth-grade students shall not be permitted to participate in football unless the conference develops a classification system that is approved by the DSSAA Board of Directors.

5.3 Students below the sixth grade shall not be permitted to practice, scrimmage, or compete on junior high/middle school interscholastic teams.

5.4 Participation shall be defined as taking part in a school sponsored practice, (see 24.3), scrimmage, or contest on or after the first allowable date for practice in that sport.

6.0 Grades

The junior high/middle school interscholastic athletic program shall include grades 6 through 8, inclusive.

7.0 Junior High/Middle School and Senior High School Competition

7.1 No junior high/middle school student who has completed a season at the junior high/middle school level shall compete in the same sport at the senior high school level during the same school year.

7.2 A junior high/middle school student who participates in a varsity or subvarsity game at the high school level shall be ineligible to participate at the junior high/middle school level in the same sport.

8.0 Examinations

8.1 A student shall not be eligible to practice, scrimmage, or compete in an interscholastic contest unless he/she has been adequately examined by a licensed physician (M.D. or D.O.), a certified nurse practitioner, or a certified physician's assistant on or after June 1 and before beginning such athletic activity for the current school year.

8.1.1 A certificate to that effect, as well as the parent's or court appointed legal guardian's consent, shall be on file with the administrative head of the school prior to the student participating in a practice, scrimmage, or game.

8.2 For any subsequent sports season in the school year, a limited reexamination shall be performed under the following circumstances:

8.2.1 If the athlete has been treated for an injury during the immediately preceding season.

8.2.2 If the athlete has been out of school during the preceding term with an illness other than the usual minor upper respiratory or gastrointestinal upset.

8.2.3 If an operation has been performed on the athlete during the preceding term.

8.2.4 If the student has a remedial defect.

8.3 The medical history of the student should be available at the time of each examination.

8.4 A player who is properly certified to participate in interscholastic athletics but is physically unable to practice for five (5) consecutive days due to illness or injury, must present to the administrative head of the school a statement from a qualified physician that he/she is again physically able to participate.

9.0 Clarifying Eligibility

9.1 In cases of doubt or disagreement, the eligibility of a student shall be determined initially by the Executive Director. If the Executive Director determines that the student is ineligible, the school and the student shall be notified and the student suspended immediately from participation in interscholastic athletics.

9.2 The school and the student shall be informed that the decision of the Executive Director may be appealed to the DSSAA Board of Directors in accordance with the procedure described in 1055 DSSAA Appeal Procedure.

9.3 Decisions of the DSSAA Board of Directors to



affirm, modify, or reverse the eligibility rulings of the Executive Director may be appealed to the State Board of Education in accordance with the procedure described in 1055 DSSAA Appeal Procedure.

#### 10.0 Eligibility Lists

10.1 Member schools shall use eligibility forms approved by the Executive Director.

10.2 A copy of the original eligibility report and subsequent addenda must be either received by the Executive Director or postmarked prior to the first contest for which the students listed are eligible. Failure to file an eligibility report as prescribed shall result in a \$15.00 fine against the school.

10.3 A student not listed on the original eligibility report or subsequent addenda on file in the Executive Director's office shall be ineligible. In the case of a student who met all DSSAA eligibility requirements but was omitted from the eligibility report due to administrative or clerical error, he/she shall be adjudged eligible and the school assessed a \$10.00 fine.

#### 11.0 Contracts Interchanged

11.1 Contracts between DSSAA member schools or between DSSAA member schools and full member schools of comparable state associations are encouraged but not required.

11.1.1 Conference master contracts are approved substitutes for individual contracts.

11.1.2 In case of a dispute and provided either a signed individual contract or conference master contract is in place, appeal may be made to the DSSAA Board of Directors which, after review of the circumstances, may assign an appropriate penalty.

11.1.2.1 Without a signed individual contract or conference master contract, a member school has no right of appeal to the Executive Director or the DSSAA Board of Directors.

11.2 Contracts are required between DSSAA member schools and non-member or associate member schools of comparable state associations.

11.2.1 A copy of the signed contract must be either received by the Executive Director or postmarked prior to the contest for which the agreement was drawn up. Failure to file a signed contract as prescribed shall result in the DSSAA member school being assessed a \$15.00 fine.

11.2.2 In the case of a dispute, a member school has no right of appeal to the Executive Director or the DSSAA Board of Directors unless a signed individual contract is in place.

11.3 Contracts shall be interchanged according to the following provisions:

11.3.1 Contracts on the accepted form shall be arranged by the competing schools for each season's interscholastic athletic contests.

11.3.2 Contracts shall be drawn up by

the faculty manager or other designated staff member of the home school of the earlier contest.

11.3.3A signed contract or any part thereof may not be nullified or modified except by mutual agreement of both schools involved.

11.4 If a game is not played, it shall be considered "no contest" unless a signed individual contract or conference master contract was in place and one of the participating schools breached the agreement in which case appeal may be made to the Executive Director or the DSSAA Board of Directors.

#### 12.0 Spring Football

12.1 No member school shall participate in spring football games nor shall a member school conduct football practice of any type outside of the regular fall sports season.

12.2 "Organized football" or "organized football practice" shall be defined as any type of sport which is organized to promote efficiency in any of the various aspects of football. Rugby and touch football featuring blocking, tackling, ball handling, signaling, etc. shall be considered "organized football" and shall be illegal under the intent of this rule.

#### 13.0 Licensed Physician

13.1 Provision shall be made for a licensed physician, a NATA certified athletic trainer, or a registered nurse to be present at all interscholastic football games in which a member school participates. The host school shall provide this service.

13.2 Failure by the host school to provide this service shall result in the school being assessed a \$100.00 fine.

#### 14.0 Use of Ineligible Athlete

14.1 The deliberate or inadvertent use of an ineligible athlete in the sports of soccer, football, volleyball, field hockey, basketball, baseball, softball, and lacrosse shall require the offending school to forfeit the contest(s) in which the ineligible athlete participated.

14.1.1 If the infraction occurs during a tournament, the offending school shall be replaced by its most recently defeated opponent. Teams eliminated prior to the most recently defeated opponent shall not be allowed to reenter the tournament.

14.1.2 Team and/or individual awards shall be returned to the event sponsor.

14.1.3 Team and/or individual records and performances shall be nullified.

14.1.4 The offending school may appeal to the DSSAA Board of Directors for a waiver of the forfeiture penalty if the ineligible athlete had no tangible affect on the outcome of the contest(s). If the forfeiture penalty is waived, the offending school shall be reprimanded and fined \$200.00 unless the athlete or his/her parent(s) or court appointed legal guardian(s) knowingly withheld information or provided

false information that caused him/her to be eligible for interscholastic competition. The burden of proof, in both cases, rests entirely with the offending school.

14.1.5 A forfeit shall constitute a loss for the offending school and a win for its opponent for purposes of standings.

14.1.6 A forfeit shall be automatic and not subject to refusal by the offending school's opponent.

14.2 The deliberate or inadvertent use of an ineligible athlete in the sports of cross country, wrestling, swimming, track, golf, and tennis shall require the offending school to forfeit the matches won and/or points earned by the ineligible athlete or by a relay team of which he/she was a member. The points contributed by an ineligible athlete to his/her team score shall be deleted.

14.2.1 If the infraction occurs during a tournament, the ineligible athlete shall be replaced by his/her most recently defeated opponent or next highest finisher. Contestants eliminated prior to the most recently defeated opponent shall not be allowed to reenter the tournament.

14.2.2 Individual awards earned by the ineligible athlete and team awards, if necessary because of adjustments in the standings, shall be returned to the event sponsor.

14.2.3 Individual records and performances by the ineligible athlete shall be nullified.

14.3 If an ineligible athlete participates in interscholastic competition contrary to DSSAA rules but in accordance with a temporary restraining order or injunction against his/her school and/or DSSAA, and the injunction is subsequently vacated, stayed, or reversed, or the courts determine that injunctive relief is not or was not justified, or the injunction expires without further judicial determination, the penalties stipulated in 14.1 and 14.2 above shall be imposed.

14.4 The intentional use of an ineligible athlete by a member school or repeated indifference to its responsibility to determine the eligibility of its athletes will subject the school to additional penalties which may include suspension for up to 180 school days from the date the charge is substantiated.

14.5 If a coach knowingly withholds information or provides false information that causes an athlete to be eligible for interscholastic competition, the coach shall be suspended from coaching in any sport at any DSSAA member school for up to 180 school days from the date the charge is substantiated.

14.6 If an athlete or his/her parent(s) or court appointed legal guardian(s) knowingly withholds information or provides false information that causes him/her to be eligible for interscholastic competition, the athlete shall be suspended from participation in any sport at any DSSAA member school for up to 180 school days from the date the charge is substantiated.

## 15.0 Reporting Violations

15.1 If a school violates a provision of the DSSAA Constitution and Bylaws, the administrative head or his/her designee shall notify the Executive Director in writing of the violation.

15.2 If a school uses an ineligible athlete, the administrative head or his/her designee shall notify the opposing school(s) or event sponsor, in the case of a tournament or meet, and the Executive Director in writing of the violation and the forfeiture of the appropriate game(s), match(es), and/or point(s) won.

## 16.0 Equivalent Rules

16.1 A full member school shall not participate in a scrimmage or contest with an instate school that is not a member in good standing of DSSAA unless the opposing school, as part of a written contract, certifies that its contestants are eligible under DSSAA rules.

16.2 A full member school shall not participate in a scrimmage or contest with an associate or non-member school of another state association unless the opposing school, as part of a written contract, certifies that its contestants are eligible under the rules of its home state association.

16.3 An associate member school shall not participate in a scrimmage or contest with an in-state school that is not a member in good standing of DSSAA unless the opposing school complies with the conditions specified in 16.1. However, the opposing school shall be exempt from those rules which DSSAA has waived for its associate member school.

16.4 An associate member school shall not participate in a scrimmage or contest with an associate or non-member school of another state association unless the opposing school complies with the conditions specified in 16.2. However, the opposing school shall be exempt from those rules which DSSAA has waived for its associate member school.

16.5 Member schools shall not participate in a practice, scrimmage, or contest with a non-school sponsored team.

16.6 Member schools shall not participate in a practice, scrimmage, or contest with university, college, or junior college undergraduates.

16.7 This rule shall not apply to games played against the alumni or faculty of the school when the game is sponsored by school authorities.

16.8 A school which participates in a game against an illegal opponent shall be required to forfeit the contest and be assessed a \$100.00 fine.

## 17.0 Codes

17.1 DSSAA is affiliated with the National Federation of State High School Associations (NFHS). The playing codes, sanctions, and other rules of the NFHS are adopted except as modified by the DSSAA Board of

Directors.

17.2 The playing rules of the United States Tennis Association, the United States Golf Association and the United States Lacrosse Association are adopted for the sports of tennis, golf and girls' lacrosse respectively except as modified by the DSSAA Board of Directors.

#### 18.0 Conferences

18.1 Member schools may establish voluntary conference organizations according to the following rules:

18.1.1 Any such organization may be composed of public and non-public schools.

18.1.2 Any conference so formed must submit its proposed membership and its constitution and bylaws to the DSSAA Board of Directors and they must be approved before the schools may enter into any contractual agreements.

18.1.2.1 All subsequent amendments to the constitution and bylaws of the conference must be approved by the DSSAA Board of Directors.

#### 19.0 All-Star Contests

19.1 Junior high/middle school students shall not participate in an all-star event until they have completed their high school eligibility in that sport.

#### 20.0 Sponsoring Interscholastic Teams

##### 20.1 Definition of Interscholastic Athletics

20.1.1 Interscholastic competition is defined as any athletic contest between students representing two (2) or more schools. Students are considered to be representing a school if the school does any of the following:

20.1.1.1 Partially or wholly subsidizes the activity (providing equipment, uniforms, transportation, entry fees, etc.).

20.1.1.2 Controls and administers the funds, regardless of their source, needed to conduct the activity.

20.1.1.3 Permits the students to compete under the name of the school.

20.1.1.4 Publicizes or promotes the activity through announcements, bulletins, or school sponsored publications.

20.1.1.5 Presents or displays individual/team awards.

20.1.2 Members of school clubs who participate in non-competitive, recreational activities or compete unattached are not considered to be engaged in interscholastic competition.

##### 20.2 Sponsorship of Teams

20.2.1 Schools may sponsor teams for interscholastic competition in a sport provided the following criteria are met:

20.2.1.1 The governing body of the participating district or non-public school approves participation in the sport. The administrative head of the school shall notify the Executive Director in writing of the

school's intent to sponsor a team in a new sport.

20.2.1.2 The governing bodies of the participating district or non-public school controls the funds needed to support the proposed team, regardless of their source, in the same manner as existing teams (coaches' salaries, purchase and repair of equipment, medical supervision, transportation, preparation and maintenance of practice and game facilities, awards, etc.). Requests from outside sources to make financial contributions or to donate equipment or services must be submitted in writing and must include an acknowledgement that the equipment becomes the property of the school. The contribution or donation must be approved in writing by the administrative head of the school.

20.2.1.3 The participating schools agree to comply with all applicable DSSAA rules and regulations as stated in the current DSSAA Official Handbook.

#### 20.3 Levels of Participation

20.3.1 Level 1 or developmental sport - less than seven (7) participating schools.

20.3.1.1 All DSSAA rules and regulations shall be in effect except 22.0, 23.0, and 29.0.

20.3.1.2 Schools shall not be permitted to scrimmage or compete against a non-school sponsored team.

20.3.2 Level 2 or recognized sport - seven (7) or more participating schools.

20.3.2.1 At the time of official recognition, DSSAA shall provide rules publications to the participating schools, designate an approved officials' association, conduct an annual or biannual rules clinic for coaches and officials, and establish a maximum game schedule.

20.3.2.2 All DSSAA rules and regulations shall be in effect.

##### 20.3.3 Withdrawal of level 2 status

20.3.3.1 If, for two (2) consecutive years, less than the required number of schools participate in a sport, DSSAA may withdraw official recognition for a period of time as determined by the Board of Directors.

#### 21.0 Certified Coaches

21.1 Only those professional employees certified by the Department of Education and whose salary is paid by the State and/or local Board of Education, or in the case of charter and non-public schools by a similar governing body, if acceptable as a coach by the governing body, shall coach, assist in coaching, or direct member school teams in any district.

21.1.1 The terms of employment must be for the regular school year and the professional assignment shall be no less than 1/2 of the school day, exclusive of coaching duties.

21.1.2 All head coaches shall be required to

attend the DSSAA rules clinic for their sport or pass an open book rules examination supplied by the DSSAA office.

#### 21.2 Emergency coaches

21.2.1 An emergency coach shall be defined as an individual who is either not certified by the Department of Education, or is certified by the Department of Education but is not employed for the school year or whose professional assignment is less than 1/2 of the school day.

21.2.2 An individual who meets the requirements of a certified coach as specified in 21.1, but whose professional assignment is located in a different school or district than his/her coaching assignment shall not be considered an emergency coach by DSSAA.

21.2.3 Member schools shall be required to annually reopen all positions that are held by emergency coaches.

21.2.4 Emergency coaches may be employed provided the local governing body adheres to the following procedures:

21.2.4.1 The employing Board of Education must attempt to locate an acceptable, certified professional staff member by advertising the coaching vacancy in the district for as many days as are required by the district's collective bargaining agreement.

21.2.4.2 If an acceptable, certified professional staff member is not available, an individual who is acceptable to the employing Board of Education may be hired as an emergency coach.

21.2.4.3 Any individual employed as a coach under the emergency provision must comply with the following regulations:

21.2.4.3.1 He/she must be officially appointed by the local Board of Education. The superintendent or his/her designee may temporarily appoint an individual if a coaching vacancy arises and the sport season begins during the interim between meetings of the local Board of Education.

21.2.4.3.2 His/her coaching salary must be paid exclusively by the local Board of Education.

21.3 Students who are practice teaching in a member school shall be permitted to assist in all professional activities during their practice teaching period.

21.4 In addition to the members of the school's regular coaching staff, who must come from 21.1 through 21.3, the local governing body may supplement a school's coaching staff with volunteer coaches. Volunteer coaches are individuals who donate their services to a school and who have been approved by that school's local governing body. A current list of approved volunteer coaches shall be on file in the school's administrative office before any coaching duties are assumed.

21.5 All head coaches shall be required to attend the DSSAA rules clinic for their sport or, if applicable, pass an open book rules examination supplied by

the DSSAA office.

21.5.1 A school shall be assessed a \$50.00 fine and the head coach shall be placed on probation if he/she fails to attend the DSSAA rules clinic or pass the open book rules examination in his/her sport. Failure to comply for a second consecutive year shall result in the school being assessed a \$50.00 fine and the coach being suspended for up to five contests as determined by the Executive Director.

21.6 Beginning with the 2000-01 school year, all head coaches shall be required to hold a current certification in adult CPR.

21.6.1 Beginning with the 2001-02 school year, all assistant coaches shall be required to hold a current certification in adult CPR.

#### 22.0 Sports Seasons and Practices

22.1 The fall sports season shall begin on August 25 and end not later than December 1.

22.2 The winter sports season shall begin 21 days before the first Friday in December and end not later than March 1.

22.3 The spring sports season shall begin on March 1 and end not later than the last school day.

22.4 Practice for any fall sport shall not begin earlier than August 25. Practice for any winter sport shall not begin earlier than 21 days before the first Friday in December and practice for any spring sport shall not begin earlier than March 1.

22.4.1 The first three (3) days of football practice shall be primarily for the purpose of physical conditioning and shall be restricted to non-contact activities. Coaches may introduce offensive formations and defensive alignments, run plays "on air," practice non-contact phases of the kicking game, and teach non-contact positional skills. Protective equipment shall be restricted to helmets, mouthguards, and shoes. The use of dummies, hand shields, and sleds in contact drills is prohibited. Blocking, tackling, and block protection drills which involve any contact between players are also prohibited.

22.5 A school which participates in a game prior to the first allowable date or after the start of the state championship shall be required to forfeit the contest and be assessed a \$100.00 fine.

22.6 A school which conducts practice prior to the first allowable date shall be assessed a fine of \$100.00 per illegal practice day.

22.7 A certified, emergency, or volunteer coach shall not be allowed to provide instruction out of the designated season in his/her assigned sport to returning members of the teams of the school at which he/she coaches.

22.7.1 A coach shall not be allowed to participate on a team in his/her assigned sport with the aforementioned players.

22.7.2 A coach shall also be prohibited from officiating contests in his/her assigned sport if the

aforementioned players are participating except in organized league competition.

22.7.2.1 The league shall not be organized and conducted by the employing school, the employing school's booster club, or the employing school's coaching staff.

22.7.2.2 The league shall have written rules and regulations that govern the conduct of contests and establish the duties of contest officials.

22.7.2.3 The league shall have registration/entry procedures, forms, and fees; eligibility requirements; and fixed team rosters, team standings, and a master schedule of contests.

22.8 A certified, emergency, or volunteer coach shall not be allowed to provide instruction during the designated season in his/her assigned sport to current members of the teams of the school at which he/she coaches outside of school sponsored practices, scrimmages, and contests.

22.9 A coach who is determined to be in violation of 22.7 and 22.8 shall be suspended from coaching in the specified sport at any DSSAA member school for up to 180 school days.

23.0 Maximum Game Schedules and Designated Sport Season

23.1 The maximum number of regularly scheduled interscholastic contests/competition dates for each team and individual in the recognized sports and their designated season shall be as follows:

23.2 The preceding game limitations, with the exception of the individual daily limitation, shall not prohibit the rescheduling of postponed games at the discretion and convenience of the member schools involved provided the game was postponed due to inclement weather, unplayable field conditions, failure of the assigned officials to appear for the game, breakdown of the bus or van carrying the visiting team, or any other circumstances beyond the control of site management which preclude playing the game. However, a team may not participate in more than three (3) contests/competition dates in a week.

23.3 A school which participates in more than the allowable number of contests in a season shall be fined \$200.00.

23.4 A school which exceeds the weekly contest limitation shall be required to forfeit the contest and be assessed a \$100.00 fine.

23.5 A student who exceeds the weekly or daily contest limitation shall be considered an ineligible athlete and the school subject to the penalties stipulated in 14.0.

24.0 Practice Sessions

Sport	Team Limitations		Individual Limitations	
	<u>Season</u>	<u>Week</u>	<u>Week</u>	<u>Day</u>
<b>Fall</b>				
Cross Country (boys and girls)	12 competition dates	+2 competition dates	+2 competition dates	
Field Hockey (girls)	12 contests	2 contests	2 competition dates	2 halves
Football (boys)	8 contests	1 contest	4 quarters	
Soccer (boys)	12 contests	2 contests	2 competition dates	2 halves
Volleyball (girls)	12 competition dates of which 1 date may involve more than 2 teams	2 competition dates	2 competition dates	
<b>Winter</b>				
Basketball (boys and girls)	14 contests	2 contests	2 competition dates	4 quarters
Wrestling (boys)	*10 contests	2 competition dates	2 competition dates	5 matches
<b>Spring</b>				
Baseball (boys)	12 contests	2 contests	2 contests	
Softball (girls)	12 contests	2 contests	2 contests	
Tennis (boys and girls)	12 contests	2 contests	2 contests	
Outdoor Track (boys and girls)	10 competition dates	+2 competition dates	+2 competition dates	
Soccer (girls)	12 contests	2 contests	2 competition dates	2 halves

+ A team may not participate in two different cross country or outdoor track meets on the same day.

\*Participation in a triangular meet shall count as two contests and participation in a quadrangular meet shall count as three contests toward the seasonal limitation.

Participation in any part of a quarter/half shall count as a quarter/half toward the weekly and daily limitations in that sport. However, in the case of football, participation on a free kick or a play from a scrimmage kick formation shall not count as a quarter. Overtime periods shall be considered as part of the fourth quarter or second half.

24.1 Member schools shall conduct a minimum of three (3) weeks of practice under the supervision of the school's coaching staff prior to the first scheduled contest in all sports.

24.1.1 The intent of this regulation is for each school to conduct regular daily practice during the aforementioned 21-day period, provided weather conditions and other safety related factors permit, without being required to practice on holidays and weekends. Practicing on holidays and weekends shall be left to the discretion of the individual schools and conferences.

24.2 A student shall be required to practice for a period of at least seven (7) calendar days prior to participating in a contest. However, if a student has been participating in a state tournament during the preceding sports season and is unable to begin practicing at least seven (7) calendar days before his/her team's first contest, he/she shall be exempt from this requirement.

24.3 A practice session shall be defined as any instructional or conditioning activity on the field, court, mat, or track or in the pool, weight room, or classroom such as team meetings, film reviews, blackboard sessions, warmup and cool down exercises, drills, and mandatory strength training.

24.3.1 All activities shall be under the supervision of a certified, emergency, or approved volunteer coach.

24.4 Practice sessions shall be limited to two (2) hours on official school days.

24.4.1 Split sessions may be conducted, but practice time shall not exceed two (2) hours for any individual athlete.

24.4.2 The two-hour practice limitation does not include time for non-instructional activities such as dressing, showering, transportation, or training room care.

24.5 A school which deliberately exceeds the two-hour practice limitation shall be assessed a \$100.00 fine.

#### 25.0 Awards

25.1 A member school and/or support group affiliated with a member school, such as an alumni association or booster club, shall be allowed to present recognition awards for team and/or individual accomplishments.

25.1.1 The awards, including artwork and lettering, shall require the approval of the administrative head of the school and their value shall be mostly symbolic.

25.1.2 Permissible awards include trophies, plaques, medals, letters, certificates, photographs, and similar items. Jackets, sweaters, shirts, watches, rings, charms and similar items if properly inscribed (reference to the team or individual accomplishment) are also acceptable.

25.1.3 Member schools and such support groups shall also be permitted to sponsor team banquets.

25.2 A non-profit group such as a coaches

association, booster club not affiliated with a member school, or community service organization shall be allowed to present recognition awards for team and/or individual accomplishments with the approval of the administrative head of the school.

25.2.1 The awards shall have symbolic value only. Awards that have utilitarian value are prohibited.

25.2.2 Non-profit groups shall also be permitted to sponsor team banquets.

25.2.3 Tournament sponsors shall be allowed to present the members of participating teams with a complimentary item(s) in accordance with 1.5.1.5.

25.3 Commercial organizations shall be allowed to present recognition awards for team and/or individual accomplishments with the approval of the administrative head of the school.

25.3.1 The awards shall have symbolic value only. Awards with utilitarian value are prohibited. The value of the award shall not exceed \$50.00.

25.4 Non-symbolic competition awards, regardless of sponsor, shall have a utilitarian value not to exceed \$50.00 per recipient and shall require the prior approval of the Executive Director.

#### 26.0 Boxing

Member schools shall not participate in interscholastic boxing.

#### 27.0 Protests and Complaints

All protests and complaints brought before DSSAA shall be in writing and shall be acted on only after the administrative head of the school involved has been given an opportunity to appear before the Board of Directors.

#### 28.0 Wrestling Weight Control Code

28.1 Each year, four (4) weeks from the first day he/she appears at practice, a wrestler must establish his/her minimum weight class at a weigh-in witnessed by and attested to in writing by the athletic director or a designated staff member (excluding coaches) of the school the wrestler attends. Thereafter, a wrestler may not compete in a weight class below his duly established weight class.

28.2 The weight classifications shall be as follows:

76 lbs.	100 lbs.	124 lbs.	148 lbs.
82 lbs.	106 lbs.	130 lbs.	155 lbs.
88 lbs.	112 lbs.	136 lbs.	165 lbs.
94 lbs.	118 lbs.	142 lbs.	250 lbs.
(minimum weight 164 lbs.)			

28.3 With the exception of the above weight classifications, the current edition of the NFHS Wrestling Rules Book shall apply.

28.4 By the end of four (4) weeks of practice, a certified team roster listing the established minimum weight class of each wrestler shall be sent to the Executive Director of DSSAA. Further, duly attested notices of additions to the certified roster shall be sent to the Executive Director

without delay.

28.5 Schools which desire to conduct their wrestling program at a time other than the season specified in 23.1 must request permission from the Executive Director.

28.5.1 A team which begins its season in October shall receive a one-pound growth allowance in November and an additional pound in December. A team which begins its season in November shall receive a one-pound growth allowance in December, an additional pound in January, and a third pound in February.

28.6 Violation of this code on the part of any coach shall be considered evidence of unethical conduct as shall other attempts to circumvent its intent which is to prevent harmful weight reduction.

29.0 Use of Officials

29.1 Member schools and tournament sponsors shall be required to use officials approved by DSSAA for interscholastic contests.

29.1.1 In the case of emergencies such as an act of God, refusal by an association to work games, or a shortage of qualified officials, schools which desire to use other than approved officials must obtain permission from the Executive Director.

29.2 Officials shall be required each year to attend the DSSAA rules interpretation clinic and pass the rules examination provided by the DSSAA office for the sport(s) they officiate.

29.2.1 Failure on the part of an official to attend the DSSAA rules interpretation clinic and pass the rules examination shall cause the official to be placed on probation and to lose his/her eligibility to officiate in a state tournament contest until both requirements have been satisfied in the same season.

29.2.2 Failure to fulfill this obligation within one (1) year shall cause the official to lose varsity officiating status. Failure to fulfill this obligation in subsequent years shall cause the official to continue to be restricted to subvarsity contests until both requirements have been satisfied in the same season.

29.2.3 Attending the fall soccer rules interpretation clinic shall satisfy the clinic attendance requirement for both the boys' and girls' soccer seasons. Attending the spring soccer rules interpretation clinic shall satisfy the clinic attendance requirement for only the girls' soccer season.

29.2.4 If, for a legitimate reason which is documented by the president of his/her association, an official is unable to attend the DSSAA rules interpretation clinic, he/she may attend a clinic conducted by another NFHS member state association provided the following procedures are observed:

29.2.4.1 No later than the day of the DSSAA rules interpretation clinic, the president of the association notifies the Executive Director, in writing, of the

official's inability to attend the clinic.

29.2.4.2 The out-of-state clinic is conducted by an individual either trained by the NFHS or designated as a clinician by the state's athletic association.

29.2.4.3 The official arranges for a letter to be sent to the Executive Director from the state's athletic association office verifying his/her attendance at the clinic.

29.3 Use of non-approved officials without permission from the Executive Director shall result in the school or tournament sponsor being assessed a \$50.00 fine.

30.0 Summer Camp and Clinic Sponsorship

30.1 DSSAA does not restrict a student's decision to attend a summer athletic camp. However, schools, school organizations, coaches, or school related groups, such as booster clubs, may not sponsor an athletic camp which limits membership to their own district, locale, or teams. Coaches employed by a summer athletic camp may not instruct their own athletes.

30.2 School related groups, such as booster clubs, which desire to sponsor the attendance of their school's enrolled students at summer athletic camps, may do so with the approval of the local school board or governing body. The disbursement of funds to pay for camp related expenses (fees, travel costs, etc.) shall be administered by the principal or his/her designee and the funds shall be allocated according to the following guidelines:

30.2.1 All students and team members shall be notified of the available sponsorship by announcement, publication, etc.

30.2.2 All applicants shall share equally in the funds provided.

30.2.3 All applicants shall be academically eligible to participate in interscholastic athletics.

30.2.4 All applicants shall have one year of prior participation in the sport for which the camp is intended or, absent any prior participation, he/she shall be judged by the coach to benefit substantially from participation in the camp.

31.0 Sanctions – School Team Competition

31.1 Member schools may participate in tournaments/meets involving four (4) or more schools only if the event has been sanctioned by DSSAA and, if applicable, by the NFHS. Tournaments/meets shall be sanctioned in accordance with the following criteria:

31.1.1 The event shall not be for determining a regional or national champion.

31.1.2 The event shall be organized, promoted, and conducted by and all profits go to a nonprofit organization. Involvement by a commercial organization shall be limited to providing financial support.

31.1.3 Nonsymbolic competition awards shall have a value of not more than \$50.00 per recipient and shall require the prior approval of the Executive Director.

31.1.4 Non-school event organizers shall submit a full financial report to the DSSAA office within ninety (90) calendar days of the completion of the event.

31.1.5 The event organizer shall submit a list of out-of-state schools which have been invited to participate and such schools shall be subject to approval by the Executive Director.

31.1.6 Out-of-state schools which are not members of their state athletic association shall verify in writing that their participating athletes are in compliance with their state athletic association's eligibility rules and regulations.

31.1.7 The event organizer shall not accept financial support or sell advertising to companies involved in the production or distribution of alcohol and tobacco products.

31.1.8 The event organizer shall comply with all applicable NFHS sanctioning requirements.

31.2 Participation in a non-sanctioned event shall result in the offending school being assessed a \$25.00 fine. A second offense shall result in a \$50.00 fine and loss of eligibility to participate in sanctioned events for the remainder of the sport season. A third offense shall result in a \$100.00 fine and loss of eligibility to participate in sanctioned events for the remainder of the school year.

#### 32.0 Coed Teams

32.1 If a school sponsors a boys' team and a girls' team in a particular sport, boys shall participate on the boys' team and girls shall participate on the girls' team even if the teams compete during different seasons.

32.1.1 A student shall participate in a particular sport for only one season during each academic year.

32.2 If a school sponsors only a boys' team in a particular sport, girls shall be permitted to participate on the boys' team.

32.3 If a school sponsors only a girls' team in a particular sport, boys shall not be permitted to participate on the girls' team.

#### 33.0 Non-School Instructional Camps and Clinics

33.1 A student may participate in a commercial camp or clinic, including private lessons, both during and out of the designated sport season provided the following conditions are observed:

33.1.1 The student must participate unattached and may not wear school uniforms or use school equipment.

33.1.2 The school may not provide transportation or pay fees.

33.1.3 The school coach may not require his/her athletes to participate in a camp or clinic or provide instruction to his/her returning athletes in a camp or clinic.

#### 34.0 Open Gym Programs

34.1 A member school may open its

gymnasium or other facility for informal, recreational activities in accordance with the following provisions:

34.1.1 The open gym must be available to all interested students, must not be restricted to members of a particular team, and must be publicized as such.

34.1.2 Student participation must be voluntary and the open gym must not be a prerequisite for trying out for a particular team.

34.1.3 The activities must be unstructured and student-generated. Organized drills in the skills or techniques of a particular sport are prohibited. Organized competition with fixed team rosters is also prohibited.

34.1.3.1 A coach may not predetermine that the open gym will include only his/her sport and publicize the open gym as being restricted to that sport. It is the responsibility of the adult supervisor to permit as many different activities as the facility can effectively and safely accommodate.

34.1.4 A coach may open the facility and distribute playing equipment but may not instruct, officiate, participate, organize the activities, or choose teams in his/her assigned sport.

34.1.5 Playing equipment is restricted to that which is customarily used in a contest in a particular sport. Playing equipment which is only used in a practice session is prohibited.

34.1.6 The participants must provide their own workout clothing.

#### 35.0 Conditioning Programs

35.1 A member school may conduct a conditioning program in accordance with the following provisions:

35.1.1 The conditioning program must be available to all interested students, must not be restricted to members of a particular team, and must be publicized as such.

35.1.2 Student participation must be voluntary. The conditioning program must not be a prerequisite for trying out for a particular team.

35.1.3 Permissible activities include stretching, lifting weights, jumping rope, running, calisthenics, aerobics, and similar generic conditioning activities. Organized drills in the skills or techniques of a particular sport are prohibited.

35.1.4 A coach may not provide instruction in sport specific skills or techniques.

35.1.5 Sport specific equipment is prohibited.

35.1.6 The participants must provide their own workout clothing.

#### 36.0 Additional Penalties

Additional penalties may be imposed by the Executive Director or the DSSAA Board of Directors for repeat offenses or as deemed necessary to ensure the proper



conduct of interscholastic competition.

### **1053 DSSAA Waiver Procedure**

1.0 A waiver request shall be submitted on the appropriate form by the principal or headmaster of the school involved and a copy forwarded to the chief school officer.

1.1 The waiver request form must be received by the Executive Director at least twenty-one (21) calendar days before the next regularly scheduled meeting of the DSSAA Board of Directors in order to be placed on the agenda for that meeting.

### **1054 DSSAA Investigative Procedure**

1.0 The following investigative procedure shall be followed when the DSSAA office receives information indicating that an incident has occurred which is not in the best interests of the interscholastic athletic programs of the member schools of DSSAA.

1.1 The administrative head of the member school involved shall be notified by telephone and confirmed by letter of the pending investigation (copy to be forwarded to the chief school officer). The notification shall contain an explanation of the nature of the investigation and identify the person(s) conducting the investigation.

1.2 Permission shall be obtained from the administrative head of the member school to interview students and/or staff members.

1.3 Each person interviewed shall be informed of the nature of the investigation.

1.4 Upon completion of the investigation, a written statement of charges shall be presented to the administrative head of the charged school (copy to be forwarded to the chief school officer).

1.5 When immediate punitive action by the Executive Director is necessary, as authorized under Article IV, Section 8, of the DSSAA Constitution, the action taken shall be stated in writing and shall be accompanied by a copy of 1055 DSSAA Appeal Procedure.

1.6 When charges are to be presented to the DSSAA Board of Directors, the charged school shall be advised of the meeting date, time, and location and shall be provided with an opportunity to respond to the charges.

### **1055 DSSAA Appeal Procedure**

1.0 Decisions of the Executive Director, with the exception of those to uphold or rescind the suspension resulting from a game ejection, may be appealed to the DSSAA Board of Directors. Member schools may appeal decisions of the DSSAA Board of Directors to the State Board of Education.

#### **1.1 Initiation of Appeal**

1.1.2 Whenever a right of appeal of a decision to the DSSAA Board of Directors is provided, an

aggrieved person (appellant) who is under the regulatory authority of DSSAA and who has, in fact, suffered a direct injury due to the decision, shall begin the appeal procedure by serving a Notice of Appeal, setting forth the grounds for the appeal, upon the Executive Director. Said Notice of Appeal shall be served by certified mail within thirty (30) calendar days after written notice to the appellant of the decision from which he or she has the right of appeal de novo.

1.2 The Executive Director shall docket any appeal received for hearing before the Board of Directors at a regularly scheduled meeting or special meeting of the Board, which shall be no later than thirty (30) calendar days after the receipt of the notice of appeal.

#### **2.0 DSSAA Hearing Procedure**

2.1 Decisions of the Executive Director may be appealed de novo to the DSSAA Board of Directors. The Board of Directors has been designated by the Secretary of Education to conduct fact finding hearings or conferences in matters regarding interscholastic athletics. The Board of Directors shall prepare proposed action. If no exceptions, comments, arguments, or appeals respecting a proposed order are submitted in writing to the State Board of Education within thirty (30) calendar days of the date of the proposed order, it shall become final.

2.2 The procedures listed below shall be followed for hearings or fact finding conferences before the DSSAA Board of Directors.

2.2.1 The Chairperson or his/her designated representative shall be the hearing officer.

2.2.2 The hearing officer shall conduct the hearing and make rulings on the admissibility of evidence.

2.2.3 All parties to the appeal may be represented by counsel.

2.2.4 The Executive Director shall note in the minutes of the meeting the names of the parties appearing and their counsel if they are represented.

2.2.5 The DSSAA Board of Directors may continue, adjourn, or postpone a hearing for good cause on motion of a party or upon its own motion.

2.2.6 Any party may request the presence of a stenographic reporter on notice to the Executive Director at least seven (7) days prior to the hearing date. Such party shall be liable for the costs of said reporter.

#### **2.2.7 Method of proceeding**

2.2.7.1 The parties to the hearing may rest upon their statements, affidavits, and briefs.

2.2.7.2 The parties may elect to argue before the Board of Directors the issues raised in their statements by notice to the Executive Director in writing at least five (5) days prior to the hearing date.

2.2.7.3 The parties may elect to supplement their statements, affidavits, and briefs by the testimony of witnesses but such election shall be in writing,

shall specify the names of witnesses to be called and the approximate amount of time necessary for said testimony, and shall be served upon the Executive Director at least three (3) days prior to the hearing date.

2.2.8 All evidence is admissible which is relevant, material, reliable, and probative but which is not unduly repetitious or cumulative.

2.2.9 Objections to the admission of evidence shall be brief and shall state the grounds for such objections. Objections with regard to the form of question will not be considered.

2.2.10 Any person who testifies as a witness shall be subject to cross examination by the parties in an order as determined by the hearing officer.

2.2.11 Any witness is subject to examination by members of the Board of Directors.

2.2.12 Any documents to be introduced into evidence shall be marked by the Executive Director and shall be made part of the record of the hearing.

2.2.13 The order of presentation, when a hearing is requested, shall be as follows:

2.2.13.1 The appellant may offer a statement and/or testimony in his/her behalf.

2.2.13.2 The appellee may offer a rebuttal argument and/or testimony in his/her behalf.

2.2.13.3 The appellant shall then have an opportunity for rebuttal.

3.0 Procedures for Exceptions to the State Board of Education

3.1 Notice of exceptions, comments, arguments, or appeals to the State Board of Education respecting any proposed order of the DSSAA Board of Directors shall be filed with the Secretary of Education no later than thirty (30) calendar days after the date of the proposed order. Any proposed order shall otherwise be final. All appeals to the State Board of Education shall be on the basis of the record. (See regulations for the conduct of hearings before the State Board of Education pursuant to 14 Delaware Code §1058)

### 1056 Recognition of Officials' Associations

1.0 An official's association which desires to officiate middle school and/or high school contests shall request recognition and approval from DSSAA in accordance with the procedure described below.

1.1 Submit the following documents to the DSSAA Officials' Committee:

1.1.1 A letter of request indicating the association's willingness to abide by DSSAA rules and regulations.

1.1.2 A brief history of the association.

1.1.3 A copy of the association's constitution and bylaws including a statement that it does not discriminate on the basis of age, gender, race, religion, etc.

1.1.4 A description of the association's

evaluation and rating system.

1.1.5 A description of the association's recruiting and training programs for new members.

1.1.6 A membership roster indicating the number of years of experience at the subvarsity, varsity, and state tournament levels for each member and also his/her most recent rating in a previous association.

1.1.7 If applicable, letters of recommendation or names of references from leagues which the association has serviced during the past year.

1.2 The Officials' Committee shall review the aforementioned documents and, if necessary, meet with the officers of the association to discuss their petition.

1.3 The Officials' Committee shall reserve the right to consult with any other interested parties during the evaluation process.

1.4 The Officials' Committee shall report its findings to the DSSAA Board of Directors and recommend that the officials' association be granted recognition, granted recognition with conditions, or denied recognition.

1.5 The president of the officials' association or his/her designee shall petition the DSSAA Board of Directors and the Board shall render a decision.

1.6 If more than one association is approved to officiate a particular sport, a conference or, in the absence of a conference affiliation, an individual school shall determine which association shall provide the officials for its home contests.

### Regulatory Implementing Order

**[Extension Of The Use Of The] Limited Standard Certification For Middle Level Mathematics And Science And [An Extension Of The Use Of The] Secondary Science Certificate For Middle Level Science**

### I. Summary of the Evidence and Information Submitted

The Secretary seeks the approval of the State Board of Education to amend the certification regulations concerning middle level certification in mathematics and science. The purpose of this amendment is to provide added flexibility in the certification requirements for middle level mathematics and science teachers for an additional 2 year period (7/1/00 – 6/30/02).

The regulation found on page 34, Section 2 of the Manual for Certification of Professional Public School Personnel is amended by extending the dates the policy is effective following the line, "All secondary science certificates are valid in middle level science, Grades 5-8". The other regulation found on page 12, Chapter II, A.3.f. of the Manual for Certification of Professional Public School Personnel and in the Regulations of the Department of Education is amended by stating that this certificate will only

be issued for 1 year and by extending the effective dates of the policy to July 1, 2000 through June 30, 2002. A single amended regulation incorporating both of these changes is attached.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on May 24, 2000, in the form hereto attached as Exhibit A. The notice invited written comments and none were received from the newspaper advertisements.

## II. Findings of Facts

The Acting Secretary finds that it is necessary to request an additional two year extension to this waiver in order to:

- Give middle level science and math teachers currently teaching on Limited Standard Certificates the time to complete course requirements needed for certification;
- Allow the newly formed Professional Standards Board time to review and consider changes and modifications to the existing certification regulations for middle level science and math teachers.

## III. Decision to Amend the Regulations

For the foregoing reasons, the Acting Secretary concludes that it is necessary to amend the regulations. Therefore, pursuant to 14 Del. C., Section. 122, the regulations attached hereto as Exhibit B are hereby amended. Pursuant to the provisions of 14 Del. C., Section. 122(e), the regulations hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

## IV. Text and Citation

The text of the regulations amended hereby shall be in the form attached hereto as Exhibit B, and said regulations shall be cited in the Regulations of the Department of Education.

## V. Effective Date of Order

The actions hereinabove referred to were taken by the Acting Secretary pursuant to 14 Del. C., Section. 122, in open session at the said Board's regularly scheduled meeting on June 15, 2000. The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware Register of Regulations.

IT IS SO ORDERED this 15th day of June, 2000.

DEPARTMENT OF EDUCATION  
Valerie A Woodruff  
Acting Secretary of Education

Approved this 15th day of June, 2000.

### STATE BOARD OF EDUCATION

Dr. James L. Spartz, President  
Jean W. Allen, Vice President  
Mary B. Graham, Esquire  
John W. Jardine, Jr.  
Dr. Joseph A. Pika  
Dennis J. Savage  
Dr. Claibourne D. Smith

### AS AMENDED

Effective July 1, 1993

Delaware State Department of Education Certification of Professional Public School Personnel

### SCIENCES

~~All secondary science certificates are valid in middle level science, Grades 5-8.~~  
~~(Policy effective 7/1/98 through 6/30/2000)~~

#### I. Requirements for the Standard License

- A. Bachelor's degree from an accredited college; and
- B. Professional Education

1. Completion of an approved teacher education program in Science;

-OR-

2. A minimum of 24 semester hours to include human development, methods of teaching secondary science, teaching of reading in science or identifying/treating exceptionalities, effective teaching strategies, multicultural education, and clinical experience/student teaching at the secondary (7-12) level;

-AND-

#### C. Specific Teaching Field

1. Major in the field of endorsement;

-OR-

2. Completion of an approved teacher education program in the field of endorsement;

-OR-

3. Completion of (at least) the semester hours indicated below for the field of endorsement:

- a. CHEMISTRY45 semester hours  
(required 9-12, valid Chemistry only)

As Currently Exists In The Delaware State Department Of Education Manual For Certification Of Professional Public School Personnel

~~Limited Standard — Middle Level Math/Science (LS-ML)~~

~~f. May Shall be issued for up to three (3) years to a teacher holding a Standard or Professional Status Certificate in~~

~~either Elementary (grades 1-8) or Middle Level (grades 5-8) who is assigned to teach grade 7 and/or 8 math and/or science, regardless of the number of credits needed for full certification. During the term of the Limited Standard Certificate, the teacher shall complete the requirements for the Standard Certificate in the area(s) of the assignment. This regulation will be effective 7/1/98 through 6/30/2000.~~

AS AMENDED IN THE REGULATIONS OF THE  
DEPARTMENT OF EDUCATION

~~[Extension of the Use of the]~~ Limited Standard Certificate for Middle Level Mathematics and Science and ~~[an Extension of the Use of the]~~ Secondary Science Certificate for Middle Level Science

1.0 ~~[Extension of the use of the]~~ Limited Standard Certificate for middle level mathematics and science and ~~[an extension of the use of the]~~ Secondary Science Certificate for middle level science.

1.1 Limited Standard Certificates for Middle Level Math/Science shall be issued for 1 year to a teacher holding a Standard or Professional Status Certificate in either Elementary (grades 1-8) or Middle Level (grades 5-8) who is assigned to teach grade 7 and/or 8 math and/or science, regardless of the number of credits needed for full certification. During the term of the Limited Standard Certificate, the teacher shall work to complete the requirements for the Standard Certificate in the area(s) of the assignment. These conditions will be effective 7/1/00 through 6/30/02.

1.2 All secondary science certificates shall be valid in middle level science, grades 5-8 from 7/1/00 through 6/30/02 only.

**Regulatory Implementing Order**

**Michael C. Ferguson Achievement Awards Scholarship**

**I. Summary of the Evidence and Information Submitted**

The Acting Secretary of Education seeks the consent of the State Board of Education to adopt regulations concerning the Michael C. Ferguson Achievement Awards Scholarship Program. Section 377 of the Epilogue to the FY 2000 Budget requires the Department of Education to promulgate regulations to implement this program. The scholarship program provides for 600 scholarships annually of \$1,000 each for students who demonstrate superior performance on the assessments administered pursuant to 14 *Del. C.*, Section 151 (b) and © of the Accountability legislation. The scholarships will be awarded annually to the students with the 150 highest scores on the DSTP without reference to any other indicators of performance and to the students with the

150 highest scores on the DSTP who participate in free and reduced lunch programs. Students in grade 8 and grade 10 are eligible for the scholarships for their scores on the reading, writing and mathematics assessments. Notice of the proposed regulation was published in the News Journal and the Delaware State News on May 24, 2000 in the form hereto attached as Exhibit A. The notice invited written comments and none were received from the newspaper advertisements.

**II. Findings of Facts**

The Acting Secretary finds that it is necessary to adopt these regulations because the Epilogue to the FY 2000 Budget requires the Department of Education to promulgate regulations to implement this program.

**III. Decision to Adopt the Regulations**

For the foregoing reasons, the Acting Secretary concludes that it is necessary to adopt these regulations. Therefore, pursuant to 14 *Del. C.*, Section. 122, the regulations attached hereto as Exhibit B are hereby adopted. Pursuant to the provisions of 14 *Del. C.*, Section. 122(e), the regulations hereby adopted shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

**IV. Text and Citation**

The text of the regulations adopted hereby shall be in the form attached hereto as Exhibit B, and said regulations shall be cited in the *Regulations of the Department of Education*.

**V. Effective Date of Order**

The actions hereinabove referred to were taken by the Acting Secretary pursuant to 14 *Del. C.*, Section. 122, in open session at the said Board's regularly scheduled meeting on June 15, 2000. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED this 15th day of June, 2000.

Department of Education

Valerie A Woodruff, Acting Secretary of Education

Approved this 15th day of June, 2000.

STATE BOARD OF EDUCATION

Dr. James L. Spartz, President

Jean W. Allen, Vice President  
Mary B. Graham, Esquire  
John W. Jardine, Jr.  
Dr. Joseph A. Pika  
Dennis J. Savage  
Dr. Claibourne D. Smith

Michael C. Ferguson Achievement Awards Scholarship Program

The Michael C. Ferguson Achievement Awards Scholarship Program, included in the Educational Accountability Act of 1998, recognizes students who demonstrate superior performance on the assessments administered pursuant to 29 Del. C., Section 151(b) and (c).

1.0 Subject to available funding, the Michael C. Ferguson Achievement Awards shall be made based on the student's score on the results of the annual spring administration of the Delaware Student Testing Program. Scores from re-testing shall not be considered. The Scholarships may be awarded to a maximum of 300 eighth grade students in the content areas of reading, writing and mathematics and to a maximum of 300 tenth grade students in the content areas of reading, writing, and mathematics.

1.1 The highest scoring eighth and tenth grade students in the state in reading, in writing and in mathematics shall receive the scholarships.

1.1.1 The eighth grade awards may be given to a maximum of 50 students in reading, a maximum of 50 students in writing and a maximum of 50 students in mathematics.

1.1.2 The tenth grade awards may be given to a maximum of 50 students in reading, a maximum of 50 students in writing and a maximum of 50 students in mathematics.

1.2 The highest scoring eighth and tenth grade students in the state in reading, in writing and in mathematics, who participate in the free and reduced lunch program and who are not already identified as one of the students in section 1.1, shall receive the scholarships.

1.2.1 The eighth grade awards may be given to a maximum of 50 students in reading, a maximum of 50 students in writing and a maximum of 50 students in mathematics.

1.2.2 The tenth grade awards may be given to a maximum of 50 students in reading, a maximum of 50 students in writing and a maximum of 50 students in mathematics.

2.0 Students may receive a scholarship in more than one content area and may also receive scholarships for their 8<sup>th</sup> and their 10<sup>th</sup> grade scores.

3.0 All scholarship awards shall be deposited in an account at the Delaware Higher Education Commission in an interest bearing account. Interest earned shall be utilized by the Department of Education and/or Delaware Higher Education Commission to offset administrative expenses associated with the program.

3.1 Funds deposited for scholarships through the Michael C. Ferguson Achievement Awards shall cease to be available to the recipient if the recipient does not attend a post secondary institution within five calendar years after graduating from high school.

3.2 It is the responsibility of the parent or guardian to notify the Higher Education Commission of any change of address during the scholarship eligibility period. Students may receive their scholarship awards even if they are living in another state at the time they attend a post secondary institution.

3.3 The Department of Education shall annually announce the winners of Michael C. Ferguson Scholarships.

3.4 The Delaware Higher Education Commission shall send a "Request for Information" form to Michael C. Ferguson Scholarship recipients in the spring of their high school senior year to determine whether they plan to use their scholarship in the following year, and which institution they will attend.

3.4.1 In August following high school graduation, the Delaware Higher Education Commission shall send enrollment verification forms to institutions identified by recipients. When completed verification forms are received by the Delaware Higher Education Commission, disbursement of scholarship funds will be made to the institution.

3.4.2 If a student does not plan to attend a post secondary institution immediately after high school graduation, it is the parent or guardian's responsibility to provide timely notification to the Delaware Higher Education Commission prior to enrollment in order to receive payment of the scholarship.

3.4.3 Recipients may defer all or a portion of payment of Michael C. Ferguson Scholarships beyond their first post secondary year, but must assume the responsibility to notify the Delaware Higher Education Commission of their plans to claim the Scholarship, and may not extend payment beyond the five year limit.

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**Regulatory Implementing Order**  
**School Custodians**

**I. Summary of the Evidence and Information Submitted**

The Acting Secretary seeks the consent of the State Board of Education to amend the regulation on School

Custodians by changing 1.0 to read "Custodians may be granted (1) one year's experience for each creditable year of experience in similar employment." This change brings the statement in line with the statements used for Secretaries and for Food Service Employees that use "creditable year" instead of "full year" of experience. Another change being recommended is to insert the words "or 24 units" after the words "not to exceed 48 acres" in 2.2.11 for clarification purposes. Notice of the proposed regulation was published in the News Journal and the Delaware State News on May 24, 2000, in the form hereto attached as Exhibit A. The notice invited written comments and none were received from the newspaper advertisements.

## II. Findings of Facts

The Acting Secretary finds that it is necessary to amend this regulation to align the language with other regulations concerning personnel.

## III. Decision to Amend the Regulation

For the foregoing reasons, the Acting Secretary concludes that it is necessary to amend the regulation. Therefore, pursuant to 14 *Del. C.*, Section. 122, the regulation attached hereto as Exhibit B is hereby amended. Pursuant to the provisions of 14 *Del. C.*, Section. 122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

## IV. Text and Citation

The text of the regulation amended hereby shall be in the form attached hereto as Exhibit B, and said regulation shall be cited in the *Regulations of the Department of Education*.

## V. Effective Date of Order

The actions hereinabove referred to were taken by the Acting Secretary pursuant to 14 *Del. C.*, Section. 122, in open session at the said Board's regularly scheduled meeting on June 15, 2000. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED this 15th day of June, 2000.

Department of Education  
Valerie A Woodruff, Acting Secretary of Education

Approved this 15th day of June, 2000.

## STATE BOARD OF EDUCATION

Dr. James L. Spartz, President  
Jean W. Allen, Vice President  
Mary B. Graham, Esquire  
John W. Jardine, Jr.  
Dr. Joseph A. Pika  
Dennis J. Savage  
Dr. Claibourne D. Smith

## School Custodians

1.0 EXPERIENCE: Custodians may be allowed one (1) year's experience for each creditable year of experience in similar employment.

## 2.0 ALLOCATION

2.1 The custodial units allocated to a district may be assigned to various locations at the discretion of the local school board and the chief school officer.

2.2 Districts are allocated one (1) full-time custodial employee for each twelve (12) custodial units or for a major fraction thereof. The number of units in each school is determined in the following way:

2.2.1 One (1) unit for each classroom or its equivalent. What is counted as "equivalent" shall be determined by the Department of Education.

2.2.2 One (1) unit for a small auditorium (less than 150 students).

2.2.3 Two (2) units for a large auditorium (more than 150 students).

2.2.4 One (1) unit for a cafeteria having a seating capacity up to 150. One (1) unit for each 150 capacity or major fraction thereof.

2.2.5 One (1) unit for a gymnasium.

2.2.6 One (1) unit for a combined auditorium and gymnasium (less than 150 students).

2.2.7 Two (2) units for a combined auditorium and gymnasium (more than 150 students).

2.2.8 One (1) unit for two locker rooms.

2.2.9 Seven (7) units for a swimming pool.

2.2.10 Units for a central heating plant are determined from the following table:

No. of Classrooms or equivalent	No. of Units
1 - 6	½
7 - 9	¾
10 - 15	1
16 - 20	1 ½

21 - 25	2
26 - 30	2 ½
31 - 35	3
36 - 40	3 ½
41 - 45	4
46 - 50	4 ½
51 - 55	5
56 - 60	5 ½
61 or more	

2.2.11 One-half (½) unit for each developed acre of the school plant site, not to exceed 48 acres or 24 units on a given site.

2.3 Part-time custodians equivalent to one or more full-time custodians may be employed with the provision that proper records will be maintained for review.

2.4 A full custodial staff for a new school building may be employed one (1) month prior to the pupil occupancy of the building.

2.5 The termination date for custodial units in buildings closed shall be six (6) weeks from the last day classes are held in the building.

2.6 Buildings which are closed and retained under the control of the school district shall lose all custodial units except units provided for site maintenance and heating.

2.7 When the school district signs a lease or in any way loses direct control of the building, such as transfer or sale legislation, the custodial units for site maintenance and heating shall terminate on the effective date of the lease or legislation.

2.8 When the function of a building is changed it shall be reevaluated for custodial units.

2.9 All custodial unit allocations shall be determined and approved by the Department of Education.

### 3.0 CLASSIFICATION

#### 3.1 Custodian-Fireman

3.1.1 When there is only one (1) custodian in a district, the custodian may be classified as a custodian-fireman.

3.1.2 There shall be only one custodian-fireman employed in each building.

#### 3.2 Chief Custodian

3.2.1 A chief custodian may be classified chief custodian when at least two other full-time custodians or the equivalent are employed in the school building or district.

3.2.2 There can be only one (1) chief custodian in a building, but there can be as many chief custodians in a

district as there are buildings in the district with three or more custodians.

3.3 Maintenance Mechanic: Each school district may classify up to ten (10) percent of the total number of custodial personnel as maintenance mechanics. Qualifications shall be as defined by the employing board.

#### 3.4 Skilled Craftsperson

3.4.1 Each district may classify an incumbent in one or more of its Maintenance Mechanic positions as a Skilled Craftsperson for purposes of this section if the incumbent:

3.4.1.1 has received a certificate as a union journeyman or equivalent in any of the following fields: Boiler Maker, Carpenter, Electrician, HVAC Mechanic, Mill Wright, Heavy Machinery Operator, Pipe Fitter, Plumber, Roofer, or Sheet Metal Worker; or

3.4.1.2 possesses a current state license in any of the fields listed in paragraph 3.4.1.1 above; or

3.4.1.3 is an Automobile Mechanic who possesses two or more National Institute for Automotive Service Excellence (ASE) Certifications in the Automotive, Truck or School Bus categories; or

3.4.1.4 is a Boiler Maker who possesses either an AWS or ASME Welding Certification; or

3.4.1.5 is a Computer Technician who possesses an A Plus Certification from CompTIA (Computing Technology Industry Association); or

3.4.1.6 is an HVAC Mechanic who possesses two or more certifications from manufacturers of digital control systems in use by the district, or possesses a certification from a manufacturer of centrifugal chillers used within the district; or

3.4.1.7 possesses two or more Hazardous Material Certifications from the State of Delaware, OSHA, or the United States Environmental Protection Agency; or

3.4.1.8 is a Pipe Fitter who possesses an AWS or ASME Welding Certification; or

3.4.1.9 is a Roofer who possesses Training Certifications from two or more manufacturers of Roofing Systems in use by the District; or

3.4.1.10 is a Burner Mechanic who possesses a certification from a manufacturer of oil or gas burners used within the District.

3.5 Building and Grounds Supervisor: Each district with ninety-five (95) or more custodial units may employ a school buildings and grounds supervisor according to the salary schedule. This position is included in the total number of custodial personnel allowed. Section 1311(c).

### 4.0 CERTIFICATES

4.1 The following hourly requirements shall be met in order to receive the Custodial Certificates listed below. The certificate guarantees additional pay as specified in the *Del. C.*, but only the local school district can change a custodian's



classification.

4.1.1 120 class hours minimum Building and Grounds Supervisor (issued only to those who hold this position).

4.1.2 120 class hours Chief Custodian Certificate.

4.1.3 90 class hours Fireman Custodian Certificate.

4.1.4 60 class hours General Custodian Certificate.

## DEPARTMENT OF HEALTH AND SOCIAL SERVICES

### DIVISION OF MENTAL RETARDATION

Statutory Authority 31 Delaware Code, Section 505 (31 Del.C. 505)

**In the Matter Of:**  
**Revision of the Eligibility Criteria**  
**For Division of Mental Retardation**  
**Services**

#### Nature of the Proceedings:

The Delaware Department of Health and Social Services ("Department") initiated proceedings to update the eligibility criteria related to Division of Mental Retardation services. The Department's proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

On May 1, 2000, DHSS published in the Delaware Register of Regulations Volume 3, Issue 11, (page 1494) its notice of the proposed regulation change pursuant to 29 Delaware Code Section 10115. It was requested that written materials and suggestions from the public concerning the proposed change be submitted by June 1, 2000, at which time the Department would receive all the information, factual evidence and public comments on the said proposed changes to the criteria.

Three written comments were received endorsing the proposed amendment due to its limited expansion of eligibility for individuals with conditions other than mental retardation who require the services of the DMR. One of the written comments also expressed a concern that the increased population base not create an undue burden on the Division's ability to provide services and the hope that the Division would receive the financial supports necessary to continue meeting the needs of its consumers.

#### Findings of Fact:

The Department finds that the proposed changes as set

forth in the May, 2000 Register of Regulations should be adopted as written.

THEREFORE, IT IS ORDERED, that the proposed eligibility criteria for Division of Mental Retardation services be adopted and shall be final effective July 10, 2000.

Gregg C. Sylvester, M.D., Secretary  
 6/14/00

#### Division of Mental Retardation Eligibility Criteria

~~"Mental retardation refers to substantial limitations in present functioning. It is characterized by significantly subaverage intellectual functioning, existing concurrently with related limitations in two or more of the following applicable adaptive skill areas: communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure, and work. Mental retardation manifests before age 18."~~

The Division of Mental Retardation provides services to those individuals whose disability meets all of the following conditions:

(A)(i) is attributable to mental retardation (1992 AAMR definition) and/or (ii) Autism (DSM IV) and/or (iii) Prader Willi (documented medical diagnosis) and/or (iv) brain injury (individual meets all criteria of the 1992 AAMR definition including age manifestation) and /or (v) is attributable to a neurological condition closely related to mental retardation because such condition results in an impairment of general intellectual functioning and adaptive behavior similar to persons with mental retardation and requires treatment and services similar to those required for persons with impairments of general intellectual functioning;

(B) is manifested before age 22

(C) is expected to continue indefinitely;

(D) results in substantial functional limitations in 2 or more of the following adaptive skill areas

1) communication;

2) self-care;

3) home living;

4) social skills;

5) community use;

6) self-direction;

7) health and safety

8) functional academics;

9) leisure;

10) work; and

(E) reflects the need for lifelong and individually planned services.

Intellectual functioning and adaptive behavior is determined by using established standardized instruments approved by the Division.



**DIVISION OF SOCIAL SERVICES**

Statutory Authority: 31 Delaware Code,  
Section 512 (31 **Del.C.** 512)

**In the Matter Of:  
Revision of the Regulations  
Of the Food Stamp Program**

**Nature of the Proceedings:**

Delaware Health and Social Services (DHSS) initiated proceedings to amend existing regulations contained in the Division of Social Services Manual Section 4006.1, 8030.1, 9059, 11003.9.1, and 14710. These changes were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

On April 1, 2000, the DHSS published in the Delaware Register of Regulations the emergency order (pages 1292 – 1305) and its notice of proposed regulations (pages 1346 – 1359). The notice requested that written materials and suggestions by interested persons related to this proposal be forwarded by April 30, 2000, at which time the Department would review information, factual evidence and public comment to the said proposed changes to the regulations.

It was determined that no written materials or suggestions had been received from any individual or the public.\*

**Findings of Fact:**

The Department finds that the proposed changes as set forth in the April 2000 Register of Regulations should be adopted as written.

THEREFORE, IT IS ORDERED that the proposed regulations of the Food Stamp Program are adopted and shall be final effective July 10, 2000.

Gregg C. Sylvester, MD, Secretary  
June 8, 2000

**PLEASE NOTE THAT NO CHANGES WERE MADE TO THE REGULATION AS ORIGINALLY PROPOSED AND PUBLISHED IN THE APRIL 2000 ISSUE OF THE REGISTER AT PAGE 1346 (3 DE REG. 1346 4/1/00). THEREFORE, THE FINAL REGULATION IS NOT BEING REPUBLISHED. PLEASE REFER TO THE APRIL 2000 ISSUE OF THE REGISTER OR CONTACT THE DEPARTMENT OF HEALTH AND SOCIAL SERVICES.**

**DEPARTMENT OF NATURAL  
RESOURCES AND  
ENVIRONMENTAL CONTROL****DIVISION OF FISH & WILDLIFE**

Statutory Authority: 7 Delaware Code,  
Section 903(e)(2)(a) (7 **Del.C.** 903 (e)(2)(a))

**In Re: Adoption of Amendment to Tidal Finfish  
Regulation No. 7 to establish recreational fishing  
restrictions for striped bass**

**Order No. 2000-A-0027**

**ORDER****SUMMARY OF EVIDENCE AND INFORMATION**

Pursuant to due notice, 3 DE REG 1426-1427 (5/1/00), the Department of Natural Resources and Environmental Control proposed to amend Tidal Finfish Regulation No. 7 pertaining to the recreational size limits of striped bass to remain in compliance with the Striped Bass Fishery Management Plan (FMP), as amended, adopted by the Atlantic States Marine Fisheries Commission (ASMFC). The FMP requires all Atlantic coastal states to reduce their landings of striped bass 28 inches or greater by 14% during 2000 due to the fishing mortality on larger striped bass exceeding the target mortality rate in 1998. The Atlantic Coastal Fisheries Cooperative Management Act (1993) requires Atlantic coastal states to comply with fishery management plans adopted by the ASMFC.

The Department implemented, by Emergency Order No. 2000-F-0017 on March 21, 2000, new recreational size limits for striped bass, effective April 1, 2000. These new size limits were approved by the ASMFC in February 2000. New Jersey has enacted identical size limits for striped bass.

In order to continue the size limits implemented by the emergency order beyond 120 days, Tidal Finfish Regulation No. 7 must be amended again.

A public workshop was conducted to discuss options to reduce the fishing mortality on larger striped bass on October 19, 1999. Public comments requested Delaware and New Jersey enact the same size limits. A public hearing was held on December 21, 1999 but a decision was delayed until the ASMFC considered New Jersey's options in February when Delaware requested reconsideration for the same options. The ASMFC approved New Jersey and Delaware's options in February 2000. Subsequent to the Department's Emergency Order, another public hearing was conducted on May 16, 2000 to discuss the continuation of the recreational size limits enacted by the Emergency Order.

## FINDINGS OF FACT

I find the following facts from the testimony and evidence presented:

The State of Delaware is required to reduce landings of striped bass that measure 28 inches or greater by 14% in 2000 according to the Striped Bass Fishery Management Plan, as amended, and approved by the Atlantic States Marine Fisheries Commission.

The ASMFC approved Delaware's proposal to reduce the minimum size limits to one striped bass a day between 24 and 28 inches and one striped bass a day at 28 inches or greater in order to reduce fishing mortality on striped bass 28 inches or greater by 14% in 2000.

Recreational fishermen favor the current size limit on striped bass enacted under Emergency Order No. 2000-F-0017.

## CONCLUSIONS

Delaware is required by the ASMFC to reduce landings of eight years + old striped bass by 14 % in 2000.

Delaware's current recreational size limit of one striped bass a day between 24 inches and 28 inches and one striped bass a day 28 inches or greater meets the requirements of ASMFC.

Delaware's recreational fishermen support the current size limits on striped bass.

The current size limits for recreational fishermen on striped bass should continue until the ASMFC requires otherwise.

## RECOMMENDATIONS

Tidal Finfish Regulation No. 7 should be amended to continue striped bass size limits of one fish a day between 24 and 28 inches and one fish a day at 28 inches or greater for recreational fishermen.

## ORDER

It is hereby ordered this 31st day of May in the year 2000 that an amendment to Tidal Finfish Regulation No. 7, a copy of which is attached hereto, is adopted pursuant to 7 Del. C. §903 (e)(2)(a) and is supported by the Department's findings of evidence and testimony received. This Order shall become effective on July 15, 2000.

Nicholas A. DiPasquale, Secretary

**TIDAL FINFISH REGULATION 7. STRIPED BASS POSSESSION SIZE LIMIT; EXCEPTIONS.**

a) Notwithstanding, the provisions of §929(b)(1), Chapter 9, Title 7, Delaware Code or unless otherwise

authorized, it shall be unlawful for any recreational fisherman to take and reduce to possession ~~any more than two (2)~~ striped bass from the tidal waters of this State ~~that measures less than twenty-eight (28) inches in total length in one day provided one measures no less than twenty-four (24) inches in total length or more than twenty-eight (28) inches in total length and one measures no less than twenty-eight (28) inches in total length.~~

b) Notwithstanding, the provisions of §929(b)(1), Chapter 9, Title 7, Delaware code or unless otherwise authorized, it shall be unlawful for any commercial food fisherman to take and reduce to possession any striped bass from the tidal waters of this State that measure less than twenty (20) inches in total length or more than 32 inches in total length.

c) Unless otherwise authorized, it shall be unlawful for any person to possess a striped bass that measures less than ~~28~~ 24 inches, total length, unless said striped bass is in one or more of the following categories:

1) It has affixed, a valid strap tag issued by the Department to a commercial food fisherman; or

2) It was legally landed in another state for commercial purposes and has affixed a valid tag issued by said state's marine fishery authority; or

3) It is packed or contained for shipment, either fresh or frozen, and accompanied by a bill-of-lading with a destination to a state other than Delaware; or

4) It was legally landed in another state for non commercial purposes by the person in possession of said striped bass and there is affixed to either the striped bass or the container in which the striped bass is contained a tag that depicts the name and address of the person landing said striped bass and the date, location, and state in which said striped bass was landed; or

5) It is the product of a legal aquaculture operation and the person in possession has a written bill of sale or receipt for said striped bass.

d) Unless otherwise authorized, it shall be unlawful for any commercial finfisherman to possess any striped bass for which the total length has been altered in any way prior to selling, trading or bartering said striped bass.

e) The words "land" and "landed" shall mean to put or cause to go on shore from a vessel.

f) It shall be unlawful for any person, except a commercial finfisherman authorized to fish during Delaware's commercial striped bass fishery, to land any striped bass that measures less than twenty ~~eight (28)~~ four (24) inches in total length.

g) It shall be unlawful for a commercial finfisherman authorized to fish during Delaware's commercial striped bass fishery to land any striped bass that measures less than twenty (20) inches in total length or more than 32 inches in total length.

**STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
DOVER**

**EXECUTIVE ORDER  
NUMBER SEVENTY-NINE**

**TO:** Heads of All State Departments, Agencies,  
Authorities and Governmental Units of the  
State of Delaware

**RE:** Relating to Community-based Alternatives for  
Individuals with Disabilities

WHEREAS, the State of Delaware is committed to providing community-based alternatives for people with disabilities and recognizes that such services advance the best interests of all Delawareans;

WHEREAS, Delaware seeks to ensure that Delaware's community-based programs effectively foster independence and acceptance of people with disabilities;

WHEREAS, programs such as home and community-based services provide the opportunity for people with disabilities, where appropriate, to live productive lives in their communities;

WHEREAS, the United States Supreme Court in Olmstead v. Zimring, 527 U.S. 581 (1999), suggests that states develop comprehensive plans for increasing access to residential services for people with disabilities;

WHEREAS, the Association for the Rights of Citizens with Mental Retardation in Delaware is a strong advocate for increasing access to community-based services for people with mental retardation;

WHEREAS, the leadership of the Association for the Rights of Citizens with Mental Retardation in Delaware has agreed that a top priority of its organization is to increase the availability of residential placements for people with mental retardation and, to that end, commits its resources toward locating, developing and siting these facilities;

WHEREAS, as Governor, I have supported increasing funds to expand community-based services for people with mental retardation and, working with the General Assembly, funding for such programs has increased by more than \$9,358,000.00, an 86.2 percent increase since taking office;

WHEREAS, Delaware must build upon its success and undertake a broader review of our programs for people with disabilities to ensure that the services offered are in the most appropriate setting;

WHEREAS, my recommended budget for Fiscal Year 2001 includes an additional 11.3 percent increase for community-based services for people with mental retardation - if approved by the General Assembly, this would raise the total increase in funding for such programs during this Administration to 111 percent;

WHEREAS, my Administration is committed to placing 24 Stockley residents and 40 persons from the community critical waiting list in residential placements in Fiscal Year 2001;

WHEREAS, in an effort to address this issue over the long-term, my recommended budget for Fiscal Year 2001 includes \$250,000 for the development of a comprehensive plan to increase community-based alternatives for people with mental retardation; and

WHEREAS, the Alliance for the Mentally Ill in Delaware is a strong advocate for increasing access to community-based services, where appropriate, for people with mental illness and quality institutional treatment when necessary;

WHEREAS, the leadership the Alliance for the Mentally Ill in Delaware has agreed that a top priority of its organization will continue to be increasing the availability of residential placements for people with mental illness and, to that end, commits its resources toward locating, developing and siting these facilities;

WHEREAS, the Delaware Psychiatric Center currently houses people with mental illness that may be treated successfully in community-based housing and the availability of additional community-based options will also serve to enhance the quality of care at the Delaware Psychiatric Center;

WHEREAS, recognizing the need for increased community based options, my Administration, the Alliance for the Mentally Ill in Delaware and other advocates for persons with mental illness are developing a two year plan to provide additional community-based placements where appropriate and will seek appropriate modifications to my recommended Fiscal Year 2001 budget to implement the plan;

WHEREAS, we must build upon these efforts and undertake a broader review of our programs for people with mental illness to ensure that the services offered are in the most appropriate setting; and

WHEREAS, in an effort to address this issue over the long-term, I will seek funding in the Fiscal Year 2001 Budget for the development of a comprehensive 5-year plan to increase community-based alternatives for people with mental illness.

NOW, THEREFORE, I, Thomas R. Carper, by virtue of the authority vested in me as Governor of the State of Delaware, do hereby order and declare the following:

1. Subject to an appropriation by the General Assembly, DHSS shall submit a written plan reporting its findings to the Governor no later than November 1, 2000, including specific recommendations on how Delaware can improve its programs for people with mental retardation by legislative or administrative action. The review shall

examine these issues in light of the recent United States Supreme Court decision in Olmstead v. Zimring. Included in the plan, shall be recommendations on a 5-year timetable for providing increased community-based opportunities, where appropriate, for people with mental retardation currently residing at the Stockley Center, as well as people with mental retardation residing in the community who need alternative services. The 5-year timetable shall also consider the feasibility and capacity of locating, siting, developing and funding residential placements and the relative priority to be given in allocating such placement alternatives.

2. Subject to an appropriation by the General Assembly, DHSS shall submit a written plan reporting its findings to the Governor no later than March 1, 2001, including specific recommendations on how Delaware can improve its programs for people with mental illness by legislative or administrative action. The review shall examine these issues in light of the recent United States Supreme Court decision in Olmstead v. Zimring. The plan shall include recommendations on the appropriate role of the Delaware Psychiatric Center in Delaware's community mental health system. The plan shall also provide be recommendations on a 5-year timetable for providing increased community-based opportunities, where appropriate, for people with mental illness currently residing at the Delaware Psychiatric Center, as well as people with mental illness residing in the community who need alternative services. The 5-year timetable shall consider the feasibility and capacity of locating, siting, developing and funding residential placements and the relative priority to be given in allocating such placement alternatives.

3. Subject to an appropriation by the General Assembly, the Delaware Department of Health and Social Services (DHSS) shall also conduct a comprehensive review of all services and support systems available to all people with disabilities in Delaware. This review shall analyze the availability, application, and efficacy of existing community-based alternatives for people with disabilities. The review shall focus on identifying affected populations, improving the flow of information about supports in the community, and removing barriers that impede opportunities for community placement. The review shall examine these issues in light of the recent United States Supreme Court decision in Olmstead v. Zimring. DHSS shall submit a comprehensive written plan (including, but not limited to, the recommendations pursuant to paragraphs 1 and 2 of this order) to the Governor no later than May 1, 2001. The plan shall include specific recommendations on how Delaware can improve its programs for people with disabilities by legislative or administrative action.

4. DHSS shall ensure the involvement of consumers, advocates, providers and relevant agency representatives in the above referenced reviews

5. All affected agencies and other public entities shall

cooperate fully with DHSS's research, analysis and production of the report.

6. As opportunities for system improvements are identified, DHSS shall use its statutory authority to affect appropriate changes.

Approved this 17th day of May 2000.

Thomas R. Carper, Governor

Attest:

Edward Freel, Secretary of State

<b>BOARD/COMMISSION OFFICE</b>	<b>APPOINTEE</b>	<b>TERM OF OFFICE</b>
Board of Landscape Architects	Ms. Abby L. Betts	09/05/00
Board of Podiatry Examiners	Dr. Kathryn Lightcap	05/31/03
Council on Boiler Safety	Mr. John L. Allen	05/22/03
	Mr. William F. Robbins	05/22/03
	Mr. Gilbert E. Roberts, Jr.	05/22/03
Council on Correction	Dr. Edward F. Crumlish, Jr.	06/06/03
	Reverend Tyrone C. Johnson	06/06/03
Council on Soil and Water Conservation	Ms. Kelly M. Kuhns	05/31/03
Delaware Arts Council	Mr. William N. Spiker	05/29/03
Delaware Bicycle Council	Mr. James J. Kelley	05/16/03
Delaware Heritage Commission	General Francis Ianni (Ret.)	05/17/03
Delaware Humanities Council	Mr. Richard A. Givens, II	05/30/03
Delaware Nursing Home Residents Quality Assurance Commission	Ms. Carol Berster	06/07/03
	Ms. Patricia C. Engelhardt	06/07/03
	Ms. Karen Gallagher	06/07/01
	Ms. Bonita Maull	06/07/02
	Ms. Phyllis Peavy	06/07/02
	Dr. McKinley Wardlaw, Jr.	06/07/02
Delaware Thoroughbred Racing Commission	Mr. Henry J. Decker	05/24/06
	Mr. William D. Patterson, Jr.	05/24/06
International Trade Council	The Honorable Harris B. McDowell, III	Pleasure of the Governor
Real Estate Commission of Delaware	Mr. Michael G. Green	05/31/03
Unemployment Compensation Advisory Council	Mr. Samuel Lathem	05/09/03

**PUBLIC SERVICE COMMISSION**

Statutory Authority: 26 Delaware Code, Section  
209(a) (26 Del.C. 209(a))

In the Matter of the Sale, Resale, And Other Provisions of Intrastate Telecommunications Services (Opened May 1, 1984; Reopened November 17, 1998)		<b>PSC Regulation Docket No. 10</b>
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In the Matter of the Development of Regulations for the Facilitation of Competitive Entry into the Telecom- munications Local Exchange Service Market (Opened November 21, 1995; Reopened November 17, 1998)		<b>PSC Regulation Docket No. 45</b>
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**Order No. 5466**

AND NOW, to-wit, this 6th day of June, 2000;

WHEREAS, by PSC Order No. 5391 entered in this proceeding on March 28, 2000, the Commission determined to conduct a public hearing on the proposed repeal of the present Docket 10 and 45 Rules and the adoption of the proposed *Rules for the Provision of Telecommunications Services* during its regular public meeting at its Dover offices on Tuesday, June 6, 2000, beginning at 1:00 PM; and

WHEREAS, also by Order No. 5391, the Commission issued Notices of Proposed Repeal and Adoption of *Rules for the Provision of Telecommunications Services* for publication in the Register of Regulations and into two (2) newspapers of general circulation in the State; and

WHEREAS, the Commission has determined to postpone its consideration of this matter to a hearing conducted during the Commission's regular public meeting at its Dover office on Tuesday, August 1, 2000, beginning at 1:00 PM; and WHEREAS, such postponement requires renewed publication of notice of the new public hearing date in two (2) newspapers of general circulation in the State, as well as in the *Delaware Register of Regulations*;

Now, therefore IT IS HEREBY ORDERED:

1. That the Commission will not consider the proposed repeal of the present Docket 10 and 45 rules, and the adoption of the new rules, at its regular public meeting on June 6, 2000.

2. That the Commission will conduct a public hearing on the proposed repeal of the present Docket 10 and 45 Rules and the adoption of the proposed *Rules for the Provision of Telecommunications Services* during its regular public meeting at its Dover offices on Tuesday, August 1, 2000, beginning at 1:00 PM.

3. That the Secretary shall cause the publication of the

Notice of Proposed Repeal and Adoption of Rules for the Provision of Telecommunications Services and Notice of Rescheduled Public Hearing attached hereto as Exhibit "A" to be made in *The News Journal* and the *Delaware State News* newspapers on the following dates, in two column format, outlined in black:

June 28, 2000 (for the *Delaware State News*)

June 29, 2000 (for *The News Journal*).

In addition, the Secretary shall forward the above Notice to the Delaware Registrar of Regulations for publication in the *Delaware Register of Regulations* on July 1, 2000.

4. That the telecommunications service providers regulated by the Commission are notified that they may be charged for the cost of this proceeding under 26 Del. C. § 114.

5. That the Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper by Order of the Commission.

BY ORDER OF THE COMMISSION:

Robert J. McMahon, Chairman

Arnetta McRae, Commissioner

Donald J. Puglisi, Commissioner

John R. McClelland, Commissioner

ATTEST:

Karen J. Nickerson, Secretary

EXHIBIT "A"

In the Matter of the Sale, Resale, And Other Provisions of Intrastate Telecommunications Services (Opened May 1, 1984; Reopened November 17, 1998)		<b>PSC Regulation Docket No. 10</b>
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In the Matter of the Development of Regulations for the Facilitation of Competitive Entry into the Telecom- Munications Local Exchange Service Market (Opened November 21, 1995; Reopened November 17, 1998)		<b>PSC Regulation Docket No. 45</b>
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**Notice of Proposed Repeal and Adoption of Rules for the  
Provision of Telecommunications Service  
And Notice of Reopened Comment Period And  
Rescheduled Public Hearing**

The Delaware Public Service Commission (the "PSC" or "Commission") proposes to repeal to its existing "Rules for the Provision of Competitive Intrastate Telecommunications Services" first adopted *In the Matter of*

*the Sale, Resale and Other Provisions of Intrastate Telecommunications Services*, PSC Regulation Docket No. 10 ("the Docket 10 Rules") and its existing "Interim Rules Governing Competition in the Market for Local Telecommunications Services" first adopted *In the Matter of The Development of Regulations For The Facilitation of Competitive Entry Into the Telecommunications Local Exchange Service Market*, PSC Regulation Docket No. 45 (the "Docket 45 Rules") and to adopt in their place a set of *Rules for the Provision of Telecommunications Services*. The proposed new Rules are intended to reflect the changes in the regulatory environment since the adoption of the Docket 10 and 45 Rules; to consolidate the Docket 10 Rules and Docket 45 Rules into a single set of rules; and to harmonize the provisions of these Rules with other regulatory provisions, where practicable. The proposed new Rules will, overall, lessen the regulatory burdens and costs, both to regulated carriers and the PSC.

Significant proposed changes to the Rules include provisions allowing carriers to file price lists in place of tariffs; eliminating the requirement that tariffs (or price lists) be accompanied by cost studies; allowing changes to existing rates to be implemented upon three days notice, rather than on fourteen or five days notice; adding a new rule to govern customer election of preferred carriers consistent with the Federal Communications Commission's preferred carrier election rules; and adding a new rule governing enforcement of the *Rules for the Provision of Telecommunications Services*.

The PSC derives its legal authority to make and amend regulations governing the conduct of public utilities from 26 Del. C. §§ 201 and 209. In addition, under 26 Del. C. § 703, the PSC is authorized to modify its regulation of telecommunications services where such modifications will, among other things, promote efficiency in public and private resource allocations and encourage economic development. The process under which the PSC acts to make and amend regulations is set forth by 29 Del. C. §§ 10111 through 10119.

The text of the existing and proposed Rules, along with summaries of the proposed changes, may be inspected at the Commission's office, located at 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, Delaware 19904, during the Commission's normal business hours, Monday to Friday, 8:00 AM to 4:30 PM. Copies of the present and proposed Rules are available at a fee of \$0.25 per page. The present and proposed rules may also be inspected and copied at the Commission's website -<http://www.state.de.us/delpsc/major/major.html#telephone>.

The PSC previously gave notice of this intended action in May 2000 and at that time solicited interested persons to file written comments by May 30, 2000. The PSC now reopens the comment period to allow for the submission of additional written comments, compilations of data, briefs or

other written materials addressing repeal of the Docket 10 Rules and Docket 45 Rules and adoption of the proposed *Rules for the Provision of Telecommunications Service*. Twelve (12) copies of such written materials shall be filed with the Commission at its office at the above address on or before July 31, 2000. In addition, any comments should include proposed text of any further or alternate amendments to the Rules supported by the party submitting comments.

The Public Service Commission has also postponed the previously scheduled public hearing upon these matters from the earlier announced date of June 6, 2000. Instead, the Commission will conduct a public hearing upon the proposed repeal of the Dockets 10 and 45 Rules and adoption of the proposed *Rules for the Provision of Telecommunications Service* and all comments and materials received on August 1, 2000, commencing at 1:00 PM at the Commission's Dover office. Persons who wish to participate in such hearing should notify the Commission in writing by July 21, 2000.

If you are disabled and wish to participate in these proceedings, you should contact the Commission to discuss auxiliary aids or services you might need to help you participate. You may contact the Commission in person, in writing, by telephone, by use of the Telecommunications Relay Service, by Internet e-mail, or otherwise. If you have questions, or desire more information, you can call the Commission's toll free number (in Delaware) at 800-282-8574. You can also obtain more information by contacting the Commission at (302) 739-4247. That number can also be used for Text Telephone calls. Inquiries can also be sent by Internet e-mail to [cmcdowell@state.de.us](mailto:cmcdowell@state.de.us).

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**DEPARTMENT OF  
ADMINISTRATIVE SERVICES  
DIVISION OF PROFESSIONAL REGULATION  
BOARD OF PHARMACY**

PLEASE TAKE NOTICE, pursuant to 29 Del. C. §2509, the Delaware Board of Pharmacy (Board) has developed and proposes to adopt changes to Regulation V to include a new definition for "container" and to clarify the activity allowed for supportive personnel to insure a final check of a prescription by a pharmacist unless there has been an exemption by the Board. The proposal represents substantive changes to the proposed regulation that was published but not adopted. Only the sections of Regulation V that are affected are printed.

A public hearing will be held on the Proposed changes on August 9, 2000 at 10:00 a.m. in the Jesse Cooper Building, Room 309 (third floor conference room), Federal and Water Streets, Dover, DE 19901. The Board will receive and consider input from any person on the proposed Regulation. Written comment can be submitted at any time prior to the hearing in care of Gradella E. Bunting at the above address. In addition to publication in the Register of Regulations and two newspapers of general circulation, copies of the proposed regulation can be obtained from Gradella E. Bunting by calling (302)739-4798.

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**DIVISION OF PROFESSIONAL REGULATION  
RULES AND REGULATIONS GOVERNING THE  
PRACTICE OF RESPIRATORY CARE**

**NOTICE OF PUBLIC HEARING**

PLEASE TAKE NOTICE, pursuant to 29 Delaware Code Chapter 101 and 24 Delaware Code Section 1770B (e)(5), the Respiratory Care Advisory Council of the Delaware Board of Medical Practice has developed and proposes to repeal section 8.5.2.6, Accumulation of Continuing Education, and renumber the rest of the section and clarify the time limitations for obtaining continuing education in sections 8.5.1. and 8.5.2.

A public hearing will be held on the proposed Rules and Regulations on Tuesday, August 7, 2000 at 2:00 p.m. in the Second Floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware 19904. The Council will receive and consider input in writing from any person on the proposed Rules and Regulations. Any written comments should be submitted to the Council in care of Doug Reed at the above address. Final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed

Rules and Regulations or to make comments at the public hearing should contact Doug Reed at the above address or by calling (302) 739-4522 extension 229.

This notice will be published in two newspapers of general circulation not less than twenty (20) days prior to the date of hearing.

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**DIVISION OF PROFESSIONAL REGULATION  
STATE EXAMINING BOARD OF PHYSICAL  
THERAPISTS**

PLEASE TAKE NOTICE, pursuant to 29 Del. C. Chapter 101 and 24 Del. C. Section 2604(1), the Delaware State Examining Board of Physical Therapists proposes to revise its rules and regulations. The proposed changes are a comprehensive revision of the old rules and regulations and to serve to implement or clarify specific sections of 24 Del. C. Chapter 26.

A public hearing will be held on the proposed Rules and Regulations on Tuesday, August 15, 2000 at 6:00 p.m. in the Second Floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, 19904. The Board will receive and consider input in writing from any person on the proposed Rules and Regulations. Any written comments should be submitted to the Board in care of Susan Miccio at the above address. The final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed Rules and Regulations or to make comments at the public hearing should notify Susan Miccio at the above address or by calling (302) 739-4522.

This notice will be published in two newspapers of general circulation not less than twenty (20) days prior to the date of the hearing.

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**DEPARTMENT OF AGRICULTURE**

The Secretary of Agriculture proposes on behalf of the Board of the Delaware Standardbred Breeders' Fund Program sixteen new chapters for the administration of the Program that are summarized as follows:

1. Adopt chapter 1 to specify the legislative source of the regulatory authority of the Board of the Delaware Standardbred Breeder's Fund Program and to establish procedures for managing the funds of the Program and governing actions by the Board.
2. Adopt chapter 2 to define more specifically terms referenced in the regulations and statute.
3. Adopt chapter 3 to specify the rules governing eligibility for Delaware-bred races under the Program.
4. Adopt chapter 4 to specify the rules governing



eligibility for bonus payments paid under the Program.

5. Adopt chapter 5 to specify the rules governing eligibility of sires for awards under the Program.

6. Adopt chapter 6 to specify the rules governing and the records required for registration in the Program.

7. Adopt chapter 7 to establish a process for interested parties to register a horse in the Program.

8. Adopt chapter 8 to establish a requirement for the Administrator of the Program to maintain a record of expenses for the Program.

9. Adopt chapter 9 to establish rules governing purses and bonus awards under the Program.

10. Adopt chapter 10 to establish responsibilities of owners and lessees under the Program.

11. Adopt chapter 11 to establish fee structures and procedures for sires under the Program.

12. Adopt chapter 12 to establish fee structures and procedures for renewal of sire registration under the Program.

13. Adopt chapter 13 to establish the authority of the Administrator of the Program to suspend or deny registration in the Program and to establish a process for appealing said suspensions or denials.

14. Adopt chapter 14 to specify the rules governing races run under the Program.

15. Adopt chapter 15 to establish fee structures and procedures for nomination and sustaining payments for horses racing under the Program.

16. Adopt chapter 16 to specify the rules governing investment of funds received pursuant to §4815(b)(3)b.2.D. of Title 29 of the Delaware Code and any interest earned thereupon.

The public may obtain copies of the proposed regulations from the Department of Agriculture, 2320 South DuPont Highway, Dover, DE, 19801 or by calling (302) 739-4811. The Department of Agriculture will hold a public hearing on July 12, 2000 at the Department of Agriculture, 2320 South DuPont Highway, Dover, DE 19801 at 4:30 p.m. Anyone wishing to submit written comments as a supplement to, or in lieu of, oral testimony, should submit such comments by July 30, 2000 to the Department of Agriculture at the address above.

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## **STATE BOARD OF EDUCATION**

The State Board of Education will hold its monthly meeting on Thursday, July 13, 2000 at 2:00 p.m. in the Townsend Building, Dover, Delaware.

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## **DEPARTMENT OF FINANCE**

### **DIVISION OF REVENUE**

### **DELAWARE STATE LOTTERY OFFICE**

#### **Delaware Lottery Rules and Regulations**

1. Amend the existing Introduction to provide that, under the Lottery's enabling legislation, not less than 30% of gross sales are to be paid to the State's General Fund. The Lottery further proposes to amend the existing Introduction to delete the reference to agent commissions.

2. Amend Section 13 (c)(d) to provide that no employee of an instant ticket supplier or on-line games computer system can purchase tickets in Lottery games.

3. Amend Section 16(c) on Determination of Prize Winners to delete the redundant language "featuring the revised prize structure".

4. Amend Section 18(a) on Place of Claims to provide that prizes are claimed at agent's locations or the Division of Revenue, and that prizes greater than \$5,000 must be claimed at the Lottery Office.

5. Amend Section 18(e) on Lottery Validation to clarify that all winning tickets are validated. Amend 18(e) to further clarify that all tickets are void if altered torn, misprinted, illegible, or damaged unless the Director is satisfied the ticket is genuine.

6. Amend Section 19 on Ownership of Lottery Tickets to clarify that the Lottery will make payment to the person who signs the back of the ticket unless there is a conflict with the information on the claim form.

7. Amend Section 29 on Fingerprinting Procedures to clarify the process for the submission of fingerprint information from retailer license applicants.

#### **Video Lottery Regulations**

1. The Lottery proposes a new section 14.1 through 14.10 to set forth the procedure used by the Lottery and the Delaware State Police for the fingerprinting of licensees and employees. The Lottery proposes to renumber the existing section 14.0-Severability to be a new section 15.0.

The Lottery will receive written public comments from July 1, 2000 through July 30, 2000. Written comments should be sent to Wayne Lemons, Director-Delaware State Lottery Office, 1575 McKee Road, Suite 102, Dover, DE 1904. Copies of the proposed rules can be obtained from the Commission office at the above address.

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**DEPARTMENT OF HEALTH AND  
SOCIAL SERVICES**
**DIVISION OF SOCIAL SERVICES**
**Public Notice  
Division of Social Services  
Delaware's General Assistance Program**

The Delaware Health and Social Services / Division of Social Services / Delaware's General Assistance Program is proposing to implement a policy change to the Division of Social Services' Manual Section 4004.6 and 4004.7. These changes arise from aligning the rules for cash assistance programs.

**Invitation for Public Comment**

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to the Mary Ann Daniels; Policy and Program Development Unit, Division of Social Services, P. O. Box 906, New Castle, DE, by July 31, 2000.

The action concerning the determination of whether to adopt the proposed regulations will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

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**DIVISION OF SOCIAL SERVICES**
**PUBLIC NOTICE  
DIVISION OF SOCIAL SERVICES  
COMMENT PERIOD:**

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to the Director, Division of Social Services, P.O. Box 906, New Castle, DE, by July 31, 2000.

**DIVISION OF SOCIAL SERVICES**
**PUBLIC NOTICE  
Medicaid / Medical Assistance Program**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 505, the Delaware Department of Health and Social Services (DHSS) / Division of Social Services / Medicaid Program is amending its Division of Social Services Manual to clarify the following policies: status of noncitizen

applicants for state-funded benefits; American Indians born in Mexico are qualified aliens; citizenship documentation; medical support requirement for Medicaid-only applicants and recipients; and, fair hearings for applicants and recipients of the Delaware Healthy Children Program. Further, Medicaid is amending its manual to add new eligibility policy for the Delaware Prescription Assistance Program.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to the Director, Medical Assistance Programs, Division of Social Services, P.O. Box 906, New Castle, DE 19720 by July 31, 2000.

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**DEPARTMENT OF NATURAL  
RESOURCES AND  
ENVIRONMENTAL CONTROL**
**DIVISION OF AIR AND WASTE MANAGEMENT  
WASTE MANAGEMENT SECTION**
**TITLE OF THE REGULATIONS:**

Regulations Governing Solid Waste

**BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE  
AND ISSUES:**

Revisions are being proposed to many sections of the regulations. See attachment for a section-by-section synopsis of the changes.

**POSSIBLE TERMS OF THE AGENCY ACTION:**

None

**STATUTORY BASIS OR LEGAL AUTHORITY TO  
ACT:**

Title 7 Delaware Code, Chapter 60

**OTHER REGULATIONS THAT MAY BE AFFECTED  
BY THE PROPOSAL:**

None

**NOTICE OF PUBLIC COMMENT:**

A public hearing will be held on Tuesday, July 25, 2000, from 7:00 p.m. to 10:00 p.m. in the auditorium of the Richardson and Robbins Building, 89 Kings Highway, Dover DE.

**PREPARED BY:**

Janet T. Manchester(302) 739-3689 June 13, 2000

**DIVISION OF WATER RESOURCES****Proposed Amendments to the State of Delaware  
Department of Natural Resources and Environmental  
Control****Regulations Governing the Control of Water Pollution  
Notice of Public Comment:**

The Department of Natural Resources and Environmental Control, Division of Water Resources, will hold a public hearing on Tuesday, August 29, 2000, beginning at 1:30 p.m., in the auditorium of the Richardson and Robbins Building, 89 Kings Highway, Dover, Delaware, to receive testimony on the proposed amendments to the Department's Regulations Governing the Control of Water Pollution.

The proposed amendments are published here today. For additional information, or to request copies of the current regulations or the proposed amendments, or both, please contact Paul Janiga, Surface Water Discharges Section, at 302-739-5731 (FAX: 302-739-8369; e-mail: pjaniga@state.de.us).

The procedures for public hearings are established in 7 Del.C. §6006 and 29 Del.C. §10117. Inquiries regarding the public hearing should be directed to R. Robert Thompson at 302-739-4403. Statements and testimony may be presented orally or in written form at the hearing. It is requested that those interested in presenting statements register in advance by mail with the Hearing Officer. The deadline for inclusion of written comments in the hearing record is the conclusion of the hearing. Written statements may be presented prior to the hearing and should be addressed to: R. Robert Thompson, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901.

**Prepared by:**

Paul Janiga, Surface Water Discharges Section, 739-5731.

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**DEPARTMENT OF  
TRANSPORTATION****DIVISION OF PLANNING AND POLICY**

The Delaware Department of Transportation (Department) is adopting new design standards as part of the Delaware Traffic Calming Manual.

The Institute of Transportation Engineers defines traffic calming as "the combination of mainly physical measures that reduce the negative effects of motor vehicle use, alter driver behavior and improve conditions for non-motorized street users." From the point of view of the Department, the goals of Traffic Calming include improved vehicular,

pedestrian and bicycle safety, a closer adherence to posted speeds, reduced cut-through traffic and an improved sense of community.

Comments or questions regarding how these standards will be administered, and under which circumstances the Department will allow for their application should be directed to:

Michael Somers  
Delaware Department of Transportation  
Division of Planning and Policy  
P.O. Box 778  
Dover, DE 19903  
(302) 760-2118 (Voice)  
(302) 739-2251 (FAX)  
msomers@mail.dot.state.de.us

**Public Workshop**

There will be a Public Workshop at the following time and place:

University of Delaware, Paradee Bldg.  
Thursday, July 6, 2000  
5 p.m. - 8 p.m.

**Public Comment Period**

The public comment period for the draft Traffic Calming Manual will be for the Month of July (July 1 through July 31, 2000). Public comments can be made at the public workshop on July 6, 2000, or mailed to the address listed above.

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**DELAWARE RIVER BASIN  
COMMISSION****P.O. Box 7360 West Trenton**

The Delaware River Basin Commission will meet on Wednesday, July 26, 2000, in West Trenton, New Jersey. For more information contact Pamela M. Bush at (609) 883-9500 extension 203.